

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76 1436

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

JERRY WINSTON, BROOME
COUNTY AVIATION, INC.,
COMMUTER AIRLINES, INC.,
and THEODORE (TED) BELL,

Defendants-Appellants.

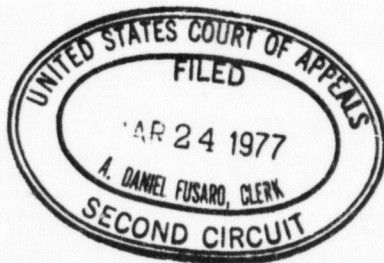
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ON APPEAL FROM THE JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

APPENDIX - VOLUME 5

Pages 1324 to 1486 and 1700 to 1859

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 THE UNITED STATES OF AMERICA

4 vs.

75-CR-83

5 JERRY WINSTON, BROOME COUNTY
6 AVIATION, INC., COMMUTER AIRLINES,
INC., and THEODORE (TED) BELL,

7 Defendants.

8
9 CONTINUED TRIAL PROCEEDINGS in the
10 above entitled matter held on the 11th day of June 1976
11 before Hon. Lloyd F. MacMahon, United States District
12 Judge, at the Federal Building, Auburn, New York.

13
14 APPEARANCES:

VOLUME 9

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16 United States Attorney for the
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20 Attorney for defendants Winston,
Broome County Aviation, Inc.,
21 and Commuter Airlines, Inc.

22 PAUL SHANAHAN, ESQ.,
Syracuse, New York,
23 Attorney for defendant Bell.

1 THE COURT: Proceed.

2 DIRECT EXAMINATION (Continuing)

3 BY MR. RICHARDS:

4 Q Mr. Warner, based upon your background and experience,
5 do you have an opinion whether, in the event a Metro
6 door, the door we have been discussing, free falls from
7 a closed position with the guard chains remaining hooked
8 to the bulkhead and the snubber system having failed,
9 would there be any damage to the snubber handle?

10 MR. CHALENSKI: Objection, your Honor.

11 THE COURT: Sustained. It doesn't
12 have enough basic facts in your hypothetical question.
13 How long is the chain? How far does it fall? How
14 heavy is the door? The gaps in the question are just
15 appalling.

16 MR. RICHARDS: No further questions.

17 CROSS-EXAMINATION

18 BY MR. CHALENSKI:

19 Q Mr. Warner, following the accident on December 9th,
20 1974, which the -- I gather the door free fell and was
21 damaged and you found that handle damaged, is that
22 correct?

23 A That's correct.

24 Q Did somebody test that snubber?

25 A I tested that snubber after doing the repairs on that

- 1 particular aircraft after I had put it back together so
2 I could properly test it.
- 3 Q Did you test the snubber on the same aircraft from which
4 it was taken off?
- 5 A The same aircraft.
- 6 Q Were any tests performed in the intermediate time?
- 7 A Negative.
- 8 Q So that snubber was not touched from the time it was
9 taken off the aircraft on the 9th of December and then
10 re-installed sometime later on that same aircraft you
11 tested?
- 12 A That's correct.
- 13 Q Was the snubber disassembled during that time?
- 14 A No, it was not.
- 15 Q Now, was anybody else present when you tested the
16 snubber?
- 17 A Yes, there was.
- 18 Q Who?
- 19 A Mr. Gary Francisco.
- 20 Q Gary Francisco?
- 21 A That's correct.
- 22 Q What is he, a mechanic?
- 23 A He was a mechanic working with me.
- 24 THE COURT: Mr. Chalenski, as I
25 reminded you yesterday several times, this is not a

1 products liability case.

2 MR. CHALENSKI: I'm sorry, your Honor,
3 I would just like to understand what the basis is
4 for a claim that this handle was sabotaged.

5 THE COURT: I haven't heard any
6 testimony by anybody with any knowledge that the
7 thing was sabotaged. Have you?

8 MR. CHALENSKI: No, your Honor.

9 THE COURT: Until you do, I wouldn't
10 worry about it. The issues are difficult enough here
11 without getting into all these sidelines. See if
12 you can focus on the points at issue.

13 BY MR. CHALENSKI:

14 Q Mr. Warner, you testified that you used a spring scale
15 to measure the weight of the door when it was 36 inches
16 out from the plane?

17 A I testified that it was approximately 36 inches out from
18 the airplane.

19 Q You used a spring scale?

20 A That's correct.

21 Q Where had you obtained the spring scale?

22 A From my shop.

23 Q Is this a spring scale commonly like you might use to
24 measure the weight of fish or something?

25 A Yes, it is.

1 Q Did you make any correction factors because of internal
2 friction in the scale?

3 A I did not.

4 Q Did you measure the weight of the door as it was moving?

5 A I did not.

6 Q Just when it was standing still?

7 A That's correct.

8 Q Were you aware that a door that is moving will exert a
9 greater force than one standing still?

10 A That's correct.

11 THE COURT: Mr. Chalenski, turn to
12 another subject. I have heard enough about the door.

13 MR. CHALENSKI: I am, your Honor.

14 Q Are you in charge of linemen and maintenance personnel?

15 A Yes, I am.

16 Q Both?

17 A That's correct.

18 Q About the end of 1974, how many line men did you have
19 working under you?

20 A I can't tell you without consulting the record.

21 Q Well, what is your best recollection?

22 A I would rather consult the record for an answer to that.

23 Q Are they available?

24 A I believe they are.

25 Q That is your records or that is a note which you have

1 prepared for this trial?

2 A That is notes of the record that I prepared.

3 Q Okay.

4 A And your question is the end of '74, and your question
5 is linemen on 12/31/74. We had nine.

6 Q And how many mechanics did you have on that date?

7 A 16.

8 Q Now, does your note tell you how many linemen and
9 mechanics you had in May of 1975?

10 A The notes that I have are between that period of
11 3/25/75. At that point I had 12 mechanics and five
12 linemen.

13 On 7/1/75, which is the other side of that
14 date, I had 12 mechanics and five linemen.

15 Q Now, were any of the linemen and mechanics fired during
16 the spring or winter of 1975?

17 A Two linemen.

18 Q Two linemen, is that all?

19 A Four mechanics.

20 Q Four mechanics were fired. Okay. Can you give me
21 their names and when they were fired?

22 A Ray Feltapia.

23 Q He was a lineman?

24 A He was a mechanic.

25 Q Okay.

1 A 3/16/75. Ed Pool, 3/16/75; Steve McKeen, 2/23/75;
2 Tim Dills, 3/16/75. The linemen are Ronald Sheldon,
3 2/23/75; Gregg Buele, 2/9/75.

4 Q Were you aware of any attempts by the airmen, aerospace
5 men to organize the linemen and mechanics at Commuter
6 Airlines?

7 A I have no specific --

8 MR. RICHARDS: Objection. It is
9 immaterial.

10 THE COURT: Sustained.

11 MR. CHALENSKI: Your Honor, may I
12 approach the bench on this?

13 THE COURT: No. Sustained. Proceed.

14 BY MR. CHALENSKI:

15 Q Were you aware that Mr. Pusztai damaged an aircraft
16 owned by Commuter?

17 A Yes, I am.

18 Q When did that occur?

19 A I do not recollect the date.

20 Q The approximate date?

21 A Some period during the last winter.

22 Q Winter of '75-76?

23 A I would believe that.

24 Q And how extensive was the damage?

25 A The damage to the propeller, damage to the engine.

1 Q How many days was the plane down for?

2 A I don't have that information.

3 Q Do you know the approximate time it was down?

4 A No, I do not.

5 Q A week, two weeks, a month?

6 A Certainly not a month.

7 Q Do you know the cost of the repairs?

8 A I do not.

9 Q Do you know how many manhours you spend in repairing
10 that plane?

11 A I do not.

12 Q Do you have an idea?

13 A Not really.

14 Q 500?

15 A Without proper records, I can't give you that answer.

16 Q Over a hundred?

17 A I would say over a hundred.

18 Q Are you aware of any occasion when Mr. Harrington
19 damaged an aircraft owned by Commuter?

20 A I didn't hear the question.

21 Q Are you aware of any occasion when Mr. Harrington
22 damaged an aircraft owned by Commuter?

23 A Yes, I am.

24 Q When?

25 A I can't give you a specific date. I can only say that

1 it happen. I.

2 Q Was it in 1971?

3 A It could be.

4 Q Okay. And what damage did the plane sustain at the time
5 you are thinking of?

6 A He made a landing-gear-up landing.

7 Q He made a landing without the wheels being down?

8 A That's correct.

9 Q What damage did the plane sustain from that?

10 A Minor damage, coweling, landing gear doors, superficial
11 damage.

12 Q Was the landing gear malfunctioning at that time?

13 A Yes, it did.

14 Q Did the pilot radio for help, do you know whether —
15 that the landing gear was down?

16 A I have no knowledge of that.

17 Q Were there any other incidents of substantial damage
18 to planes owned by the carrier?

19 A During what period, sir?

20 Q Since 1970.

21 A I have no recollection. It is possible, but I don't
22 recall it.

23 Q The incidents of substantial damage you recall then are
24 Mr. Pusztai and Mr. Harrington; is that correct?

25 A That's correct.

1 Q And this door with Mr. Sholl?

2 A That's correct.

3 Q And a door fell with Mr. Briggs, is that correct?

4 A I don't recollect it. It is possible.

5 Q We have testimony that a door fell when Mr. Briggs was
6 operating a plane and a door fell a couple of weeks ago.
7 Did it not?

8 A This is possible.

9 Q Well, do you know whether it did or not?

10 A Yes, a door -- let me put it this way: we had a failure
11 of a snubber. It did not fall.

12 Q Did the door sustain any damage during the course of
13 that fall?

14 A It did not.

15 Q Was anything damaged?

16 A Only the failure, failed part.

17 Q Was there a pin at the bottom of the door?

18 A A pin at the bottom of the door -- the pin did not fail.
19 The bracket that holds that pin did fail.

20 Q Well, did the snubber fail or the bracket failed?

21 A The bracket failed.

22 Q During the fall of 1974, do you recall what planes
23 the company had?

24 MR. SHANAHAN: What was the question?

25

1 BY MR. CHALENSKI:

2 Q Do you recall the planes that the company owned?

3 A Not accurately.

4 Q Has the company bought any planes since then?

5 A Yes, we have.

6 Q And how many?

7 A I believe three Chieftains.

8 Q How many planes does the company own now?

9 A Four Metros, five Chieftains, one Navajo and three
10 Beaches.

11 Q Okay. Since the fall of 1974, has the company sold or
12 otherwise disposed of any planes?

13 A Yes.

14 Q What planes?

15 A Navajos.

16 Q How many?

17 A I don't have an accurate count.

18 Q Your best recollection, three, four, something like that?

19 A That would be correct.

20 MR. CHALENSKI: Thank you, Mr. Warner.

21 MR. RICHARDS: No questions.

22 THE COURT: You are excused.

23 (Witness excused.)

24 MR. RICHARDS: The defense calls

25 Hugh McDougald.

1 HUGH T. McDOUGALD,
2 having been called as a witness in behalf of Defendant
3 Winston, was first duly sworn according to law and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. RICHARDS:

7 Q Mr. McDougald, where do you reside?

8 A 1533 Westmoreland Avenue, Syracuse, New York.

9 Q Would you keep your voice up, please.

10 A 1533 Westmoreland Avenue, Syracuse, New York.

11 Q For whom are you presently employed?

12 A I have been laid off. The company went broke.

13 Q And what is your trade or profession?

14 A Pilot.

15 Q Now, were you previously employed by Commuter Airlines?

16 A Yes.

17 Q During what period of time?

18 A That would be -- I was hired in June of '74, and I worked
19 July '74 through July '75.

20 Q All right. Now, during the period of time you were
21 employed by Commuter, did you have occasion to attend
22 any union meetings in the early part of October?

23 A Yes, I did.

24 Q Would you tell the jury where this meeting was held?

25 A Well, one of them was in Vestal and two others that

1 I recall, possibly three, but I recall two were held at
2 a housing complex not too far from the airport.

3 Q Now, in regards to the Vestal meeting, could you tell
4 us about what time you arrived?

5 A It was rather an open meeting, informal. I arrived
6 probably between 8 and 9 o'clock.

7 Q And did you stay until the meeting broke up?

8 A Yes.

9 Q And was there any representative from the union speaking
10 to this group?

11 A Mr. Calder.

12 Q And was this person's name Mr. Alexander Calder?

13 A Yes.

14 Q And was this the Teamsters organization?

15 A That's correct.

16 Q Did Mr. Calder address the group at that meeting?

17 A Yes, he did.

18 Q Did you stay throughout his address, did you hear the
19 entire presentation?

20 A Yes, I did.

21 Q Now, at any time, did you hear Mr. Calder mention the
22 names of Robert Slough, Ira Josephson or Michael Baan
23 in that address?

24 A Not in the address.

25 Q Did he at any time in your presence mention those names?

1 A No, he didn't.

2 Q Okay.

3 THE COURT: Were those three people
4 present at the meeting?

5 THE WITNESS: Yes, they were.

6 BY MR. RICHARDS:

7 Q Could you estimate how many persons were present at
8 that meeting?

9 A Well, some people came in and left before the meeting
10 was over and I never really counted. I wasn't concerned
11 but it seemed like the majority of people were there,
12 a very good turnout.

13 Q Say something over 15, if you can recall?

14 A Oh, yes.

15 Q At least that?

16 A Yes.

17 Q Now, did you have occasion to attend a copilots' meeting
18 at the firm's place of business some two to three days
19 later?

20 A Yes, I did.

21 Q And had this meeting been called by the company?

22 A That's correct.

23 Q And was this meeting attended to by all the copilots
24 employed by the company?

25 A To the best of my knowledge.

1 Q And do you recall when that meeting started?

2 A It was in the morning, I believe, approximately mid-
3 morning.

4 Q In the mid-morning?

5 A Yes.

6 Q And do you recall how long the meeting lasted?

7 A I would say about an hour, maybe an hour and a half.

8 Q In the course of that meeting, did Mr. Winston address
9 the group?

10 A Yes, it did.

11 Q Mr. McDougald, I show you Government's Exhibit 33A and
12 ask you if you had an opportunity to review that
13 transcript last night, or a copy of that transcript.

14 A Yes, I have.

15 Q And is that transcript reasonably correct as to what
16 Mr. Winston said at that meeting?

17 A Yes, it is.

18 Q All right. Now, following that meeting of the co-
19 captains, did you have another occasion to attend a
20 meeting at which Mr. Winston addressed a group of pilots
21 or copilots?

22 A Yes.

23 MR. SHANAHAN: I think you spoke of
24 a meeting with cocaptains. It is copilots.

25 MR. RICHARDS: Yes, excuse me.

1 Q Let me rephrase that question. When I showed you the
2 transcript, that transcript reflects generally what
3 Mr. Winston said at the meeting of the copilots?

4 A Exactly.

5 Q Now, later, did you have another meeting at which Mr.
6 Winston addressed the group?

7 A There was another meeting -- well, it didn't start out
8 as a meeting. It started out as an educational program.

9 Q Did this educational program concern ground school
10 training on the Metro?

11 A Right.

12 Q And you do recall Mr. Winston addressing the group at
13 that meeting?

14 A Exactly.

15 Q Do you recall whether or not the meeting had started
16 before Mr. Winston addressed the group?

17 A Oh, just began, just shortly before that.

18 Q Okay. Now, how long did Mr. Winston speak to that group?

19 A Not very long, a few minutes, ten minutes, maybe.

20 Q All right. Now, what did Mr. Winston say at that
21 meeting?

22 A Well, he just reiterated his position that he had made
23 previously and pointed out the fact that the company did
24 have benefits and gave an example of Hank Excell who
25 was retiring and Bert Malstrom, I believe his name was,

1 Bert Malstrom, who had passed away and the family of
2 Bert would receive certain benefits which the company
3 had planned, had made plans for in the event that
4 anything happened to anyone.

5 He pointed out that this was something
6 that he had voluntarily done. He didn't need any union
7 pressure. The company was looking out for our interests
8 in the future.

9 Q Now, was there any reference to the contracts entered
10 into by other companies?

11 A I am not sure I know what you mean.

12 Q All right. Was there any reference to Mr. Winston
13 closing his doors, cutting down routes and retiring at
14 that meeting?

15 A No, no.

16 Q You have no recollection of that being said?

17 A No, I have no recollection of anything like that.

18 Q Now, at any time between that meeting and when the
19 election was held, did you have occasion to attend any
20 union meetings?

21 A Yes, I did.

22 Q And do you recall the approximate dates of these
23 meetings?

24 A I recall one of them was later in November, the last
25 one I went to.

1 Q Now, the one late in November, where was that held?

2 A That was also held at the housing complex.

3 Q I'm sorry?

4 A That was held at the housing complex which I spoke of
5 earlier.

6 Q Is this the Penview Apartments?

7 A That sounds correct.

8 Q Do you recall where the other meeting was held?

9 A The two after Vestal would be at the Penview Apartments.

Q Okay. Now, the first meeting you went to, was there
11 a discussion by the group concerning ways or means
12 of costing the company money?

13 A Are you talking about Penview or Vestal?

14 Q Either.

15 A It would be at Penview.

16 Q All right. So at the Penview meeting you did overhear
17 some discussion regarding costing the company monies?

18 A Yes. I didn't overhear it. It was a very open
19 discussion.

20 Q Would you relate to the Court and the jury just what
21 you heard?

22 A Well, Mr. Calder pointed out the fact that if the
23 union got in, they would have to sign a contract. In
24 order to sign a contract, they would have to negotiate,
25 and sometimes during negotiations they ran into

1 problems and that he wanted people to figure out ways
2 that they could cost the company -- force them into
3 negotiations, the type that we wanted. He brought out
4 the fact that they represented Pan American Airlines
5 as a clerk, and Pan American had always been well --
6 not always, but they had at that time been talking
7 about cost of fuel and trying to figure out ways they
8 could cut the cost of fuel, and he suggested that
9 perhaps --

10 Q Did you say cut the cost of fuel?

11 A Of Pan American, their cost of fuel.

12 Q I see.

13 A Not our cost, but their own.

14 Q All right, proceed.

15 A So he suggested to the group that perhaps it would be
16 a way of forcing the company to negotiate by consuming
17 more fuel.

18 THE COURT: Are you telling us that
19 he said if you run up the expenses or in effect that
20 if you run up expenses, that that is going to force
21 the company to negotiate?

22 THE WITNESS: Cost expenses, yes.

23 BY MR. RICHARDS:

24 Q Was there anything else said?

25 A Pardon me?

1 Q Was there anything else said by Mr. Calder or anyone
2 else regarding costing the company money?

3 A Yes. So Mr. Calder suggested this and Paul Briggs said
4 he didn't think that particular method was applicable
5 to Commuter's operation.

6 In other words, it wouldn't work with
7 Commuter. They are a short-haul operation, primarily.
8 He suggested perhaps delays, delaying tactics.

9 Q What was said regarding delay or delaying tactics?

10 A Delaying flights, slowdown. It would be the same thing
11 if you delayed the arrival at a point, then you would
12 be consuming more fuel if you were in the air at the time,
13 but Paul Briggs pointed this out, that it wasn't
14 applicable to Commuter's operation. Then he went on
15 and said well, what about counter duty, perhaps the
16 copilots could find a way that they could affect the
17 operation.

18 Q What was said regarding counter duty?

19 A Well, he didn't get into specifics. He just mentioned
20 the copilots --

21 Q But you overheard the expression counter duty?

22 A Yes.

23 Q Now, you were a copilot and had counter duties?

24 A That's right.

25 Q And was part of your duties to collect the cash

1 customers paid for tickets at the counter?

2 A That's true.

3 Q All right. Anything else at this meeting?

4 A There was a great deal of silence. He was doing most
5 of the talking. He asked people for suggestions. I
6 heard someone say something about higher maintenance,
7 tires, brakes, cylinders.

8 Q Was there any discussion regarding these brakes,
9 cylinders or tires?

10 A No, no discussion.

11 Q It was merely mentioned in the conversation?

12 A Right.

13 Q Was there anything else you heard?

14 A Generally, he said -- there was no actual decision at
15 that time on what could be done to cost the company,
16 to force them into negotiations. He said we will
17 discuss this later.

18 THE COURT: Did he say anything about
19 the duty of the company to negotiate?

20 THE WITNESS: Pardon me, I missed
21 something.

22 THE COURT: Did he say anything about
23 the legal duty of the company to negotiate with an
24 authorized representative of the employees, did he
25 mention that at all?

1 THE WITNESS: Not to the best of my
2 knowledge, no, not at that time, although I believe
3 he did, later.

4 BY MR. RICHARDS:

5 Q Did he at some subsequent meeting?

6 A Yes.

7 Q Have you told us everything you heard regarding ways
8 of costing the company money at these meetings?

9 A At that particular meeting, yes.

10 THE COURT: And all of this was
11 to try to force the company into negotiating, is
12 that what you are saying?

13 THE WITNESS: Exactly.

14 BY MR. RICHARDS:

15 Q Did you attend any other union meeting at which these
16 subjects were discussed?

17 A What was discussed?

18 Q Any of these subjects about costing the company money.

19 Now, Mr. McDougald, before the
20 election --

21 A But I missed some of the meetings.

22 Q Okay. Before the elections and after September of '74,
23 did any pilots approach you concerning support of the
24 union?

25 MR. CHALENSKI: Your Honor, the answer

1 to this, I would like a time qualified. Is that any
2 time up to the present?

3 MR. RICHARDS: No, before the
4 election, after September '74.

5 MR. CHALENSKI: Sorry.

6 A Yes, there were pilots and copilots that approached me.

7 Q All right. To the best of your ability, would you tell
8 us the dates when someone approached you regarding
9 support of the union and where it took place?

10 A I remember a very distinct incident, which I considered
11 an incident at the time.

12 Q Where did this incident take place?

13 A It was in the terminal building. Basically, the pilots
14 were talking among themselves, trying to find out --

15 Q Mr. McDougald, where did the incident take place?

16 A All right. Well, it was at the terminal building.

17 Q And who approached you?

18 A Norman Fairchild approached me.

19 Q Anyone else?

20 A DeLorentis, I believe, was with him.

21 Q All right. And what was said to you?

22 A He said, "Come on over here, I want to talk to you."

23 I was over by the ticket counter at the time and he led
24 me over near the baggage area against one wall, and I
25 thought that something was wrong.

1 Q What was said to you, Mr. McDougald?

2 A Well, he said, "You have to sign this card."

3 Q What did he mean when he said sign this. Did he have
4 something in his hand?

5 A It was a card. As I understood, it was a card requesting
6 a ballot.

7 Q Did he say anything further to you?

8 A He said, "We need you to support this. It is not a vote
9 for or against the union, but we want you to sign this
10 and I am insisting that you sign it right now."

11 Q Were any gestures made in this conversation?

12 A Well, he had one fist, as I recall, it was his left
13 fist clenched, and he had a grin on his face and he had
14 an angry voice.

15 Q Were there any other occasions when pilots spoke to you
16 regarding support of the union?

17 A Not in that manner, at that time.

18 Q Were there any other occasions when pilots spoke to you
19 regarding the support of the union?

20 A Yes.

21 Q Would you tell us when and who approached you?

22 A Well, it seemed like almost everyone approached me in
23 some regard to find out my position, what my opinion was.
24 Some people were more actively interested in having it
25 than others. At least they were more interested in

1 exposing their position than others.

2 Q Now, Mr. McDougald, I take it that on the meeting of
3 October 2nd, that first meeting in Vestal, you did not
4 sign one of those authorization cards?

5 A No, I don't recall signing one because they gave me one,
6 said sign it, and I was carrying it around, and that is
7 why Fairchild wanted me to sign it.

8 Q Did you eventually sign such a card?

9 A I signed it in front of him, just to relieve the
10 pressure.

11 Q Now, can you tell me in your best recollection how many
12 times you were approached by other pilots concerning
13 your support of the union?

14 A That would be difficult to tell you that.

15 Q More than six times?

16 A Oh, yes.

17 Q Now, was there an occasion when you went into Mr.
18 Winston's office to discuss union activity?

19 A Yes.

20 Q Do you recall when this conversation took place?

21 A It would have to be after the address to the copilots.
22 I don't recall the date.

23 THE COURT: Was it after this incident
24 by the counter which you told us about?

25 THE WITNESS: Yes, it was.

1 THE COURT: And during this period
2 that you say you were pressured by the other pilots
3 to sign this card?

4 THE WITNESS: I am having difficulty
5 hearing.

6 THE COURT: I'm sorry. Did you go
7 see Mr. Winston during this period when you say that
8 the other pilots were pressuring you to sign the card?

9 THE WITNESS: I was called in.

10 THE COURT: Called in by Mr. Winston?

11 THE WITNESS: The company made an
12 appointment for me to see him.

13 THE COURT: What do you mean, who made
14 the appointment?

15 THE WITNESS: Well, I received word
16 from a secretary by phone when I called in about what
17 my schedule was, my flight. She said, "Well, we would
18 like to talk to you."

19 THE COURT: "We" would like?

20 THE WITNESS: Well, she said Mr. Winston
21 would like to talk to you about 5 o'clock. I believe
22 it was around 5 o'clock.

23 THE COURT: Had Mr. Winston ever called
24 you into his office before?

25 THE WITNESS: Well, for a variety of

1 things, yes.

2 BY MR. RICHARDS:

3 Q All right. Now, Mr. McDougald, when you went to the
4 office, was Mr. Winston there?

5 A Yes, he was.

6 Q And what did he say to you?

7 A Well, he just thought that he would like to generate his
8 position privately rather than a group and discuss his
9 position with me. He said that approximately, oh,
10 18 as I recall, was approximate, people had given him
11 their support in terms of their ballot, and he thought
12 that was the right thing for the company.

13 THE COURT: Did he ask you any questions?

14 THE WITNESS: No, he didn't.

15 THE COURT: He didn't ask you a single
16 question?

17 THE WITNESS: No, absolutely not a one
18 because I voluntarily started talking before I think
19 he was finished, really.

20 BY MR. RICHARDS:

21 Q What did you say to him?

22 A And I told him that he was going to have my support.
23 And I don't know if I told him why, but I was getting
24 the impression, had been getting the impression that I
25 was being subjected to pressure by people in the company.

1 the pilots, and that I didn't feel that I wanted the
2 pressure.

3 Q Now, Mr. McDougald, I would like to show you Defendant's
4 Exhibit U marked for identification and ask you if you
5 can identify that.

6 A Yes, I recall it.

7 Q Now, do you know what that document is?

8 A Yes, I do.

9 Q And is that a statement which you signed at one of these
10 union meetings?

11 A That's correct.

12 Q Now, this statement says, "Friday, November 1, 1974 at
13 1700 a.m. by appointment made by Mr. Jerry Winston, I
14 was required to go to his office at Broome County
15 Airport for an interview regarding the union election.
16 His wife was present. He told me 'I have 18 people who
17 have already turned in their ballots to me and I would
18 like you to give me your ballot.'"

19 There is more, but not material here.

20 Now, Mr. McDougald, this statement indicates that Mr.
21 Winston did indeed ask you for your ballot when you
22 went in there, is that correct?

23 THE COURT: I don't know what it adds
24 to his testimony. He just told you that. Are you
25 using the statement to try to impeach him or what?

1 MR. RICHARDS: No, I'm not, your Honor.

2 THE COURT: Then it has no proper use.

3 BY MR. RICHARDS:

4 Q Would you relate to me, Mr. McDougald, the circumstances
5 under which you executed this statement?

6 THE COURT: Sustained.

7 MR. RICHARDS: No further questions.

8 THE COURT: Unless you are using it
9 to impeach him.

10 CROSS-EXAMINATION

11 BY MR. CHALENSKI:

12 Q Mr. McDougald, you surrendered your ballot to Mr. Winston
13 because you really didn't have any interest in the union,
14 you weren't afraid of Mr. Winston, is that correct?

15 A That's correct.

16 Q Or anything that he would do?

17 A That's correct, I was not.

18 Q Do you recall speaking to a specialagent of the Federal
19 Bureau of Investigation on April 15th, 1975?

20 A I do.

21 Q Did you tell him that story?

22 A I don't think I used those words, no.

23 Q You what?

24 A I don't think I used those words.

25 Q But something like that?

1 A I recall what I did say.

2 Q Mr. McDougald, tell me if this is made up. I am reading
3 from a report of Special Agent Worst --

4 MR. SHANHAN: I object to the form
5 of that question.

6 THE COURT: It is certainly objectionable.

7 BY MR. CHALENSKI:

8 Q Tell me if this is correct. I am reading from the
9 report --

10 THE COURT: No. Did you state.

11 BY MR. CHALENSKI:

12 Q Did you state -- did you tell Mr. Worst that a series
13 of interviews were held by Winston with each individual
14 pilot and/or copilot, and that prior to going into this
15 meeting with Winston, you became aware of the fact that
16 Winston was asking each and every pilot or copilot to
17 surrender his or her ballot to him, did you state that?

18 A Yes.

19 Q Specifically because of the fact that he, Winston, stated
20 that he did not desire to have a union representing the
21 pilots and the copilots?

22 A Would you please read that again, the last --

23 Q Specifically because of the fact that he, Winston,
24 stated that he did not desire to have a union repre-
25 senting the pilots and the copilots?

1 A Yes.

2 MR. RICHARDS: Could I have the
3 question and answer, please?

4 THE COURT: Both answers were yes.
5 In other words, he said --

6 MR. RICHARDS: May I have the question,
7 your Honor?

8 THE COURT: Is this what he said.

9 BY MR. CHALENSKI:

10 Q Did you tell Mr. Worst that you were aware that Winston
11 was going to ask you at the time he went into the meeting
12 about the ballot and that prior to Winston making any
13 statement, you voluntarily surrendered your ballot to
14 Winston?

15 A It was based on my knowledge, that would be --

16 THE COURT: Is that what you told the
17 FBI agent?

18 THE WITNESS: Okay. I think that's
19 true. Now, would you read it again, please?

20 Q That you were aware that Winston, at the time of this
21 meeting, was going to ask you for your ballot.

22 A It was my opinion, yes.

23 Q And prior to Winston making any statement, you voluntarily
24 surrendered your ballot to him?

25 A That's correct.

1 Q Did you state that you voluntarily surrendered your
2 ballot due to the fact that you had heard information
3 that in 1970 or 1971 an attempt was made by another
4 union to represent the pilots and copilots, and when
5 Winston approached the pilots and copilots to surrender
6 their ballots, anyone who did not surrender their
7 ballots were immediately fired?

8 A No, that's not true.

9 MR. RICHARDS: Objection.

10 THE COURT: Overruled.

11 Did you say that?

12 THE WITNESS: I don't recall that.

13 THE COURT: Do you recall?

14 THE WITNESS: I don't recall saying it.

15 THE COURT: Do you deny saying it?

16 THE WITNESS: I don't remember saying it.

17 I couldn't be positive I didn't say it.

18 THE COURT: Take a good look at it.

19 See if you remember.

20 Show it to him.

21 BY MR. CHALENSKI:

22 Q The first paragraph, Mr. McDougald.

23 A No, that is not correct and I don't recall saying it.

24 Q You deny that you said that?

25 A I don't remember saying it.

1 Q Do you deny that you said it?

2 A I don't remember. I would have --

3 THE COURT: You are under oath here.

4 Do you deny that you said it or don't you?

5 THE WITNESS: I would deny it, yes.

6 BY MR. CHALENSKI:

7 Q Did you tell Agent Worst that with what I just read in
8 mind, you had no intentions of bucking the system since
9 Winston told you that there were approximately 17 or 18
10 other pilots and copilots that had surrendered their
11 ballots?

12 A No, I don't remember saying that.

13 THE COURT: Again, do you deny that
14 you said it?

15 THE WITNESS: Yes, those aren't my words.

16 BY MR. CHALENSKI:

17 Q You deny anything to that effect?

18 A No, not to that effect, not to that effect.

19 Q Your answer is that you do deny saying anything to that
20 effect?

21 A To that effect.

22 Q Now, at the time you surrendered your ballot, was it
23 your intention not to vote?

24 A My intention was to vote for the company. By surrender-
25 ing the ballot, I was voting for the company.

1 Q Did you tell Agent Worst that you voluntarily
2 surrendered your ballot due to the fact that you were
3 aware there would be an issue of at least two, if not
4 three ballots and you would have a chance at a later
5 date to voluntarily express your opinion as to whether
6 a union would represent the pilots and copilots?

7 A I was aware that there would be other ballots.

8 Q Did you tell Agent Worst that you did voluntarily vote
9 when there were elections since you were supplied with
10 a second ballot?

11 A Would you read that again, please?

12 Q Did you tell Agent Worst that you did voluntarily vote
13 when there were elections since you were supplied with
14 a second ballot?

15 A I don't think that is the right wording, but that might
16 be true.

17 Q You subsequently did cast a vote?

18 A Yes, I did.

19 Q You didn't turn that ballot in to Winston?

20 A No.

21 Q Did you vote for the union?

22 A I voted against them.

23 Q In what manner?

24 A I don't recall how they were set up.

25 Q Did you put a mark on the box in the ballot?

1 A I don't remember. You could show me one, I perhaps
2 would recall it.

3 Q Excuse me?

4 A If you could show me a ballot, I might recall. I don't
5 recall.

6 Q You don't know how you voted now?

7 A No, no, I don't know if I checked it or just what I did.
8 I don't recall how they were set up. If you are saying
9 did I check it or not, I don't recall.

10 Q Well, did you know that by not sending any ballot in at
11 all, that was a no vote?

12 A I seem to remember something about that, but -- I think
13 that is correct.

14 Q You could have voted no, just by not sending anything in.
15 Instead, you did submit a ballot?

16 A Right.

17 Q Do you know James McKinly?

18 A Is he the one in Washington?

19 Q Yes.

20 A Yes.

21 Q Did you tell McKinly, either in words or substance,
22 during the first week of October while McKinly was up
23 in Binghamton, that since McKinly was leaving the company
24 at that time, he should vote for the union since it
25 would not make any difference to him?

1 A No, I don't recall that.

2 Q Do you deny that you told him that?

3 A Yes.

4 Q Now, do you recall talking to Agent Worst about a
5 meeting at which the Defendant Winston spoke?

6 A No. Perhaps you could refresh my memory.

7 Q Well, let me start a different way. How many meetings
8 did you attend at which Winston did speak?

9 A There was the initial copilots' meeting and there was
10 the educational program which he spoke at.

11 Q Did you tell Agent Worst that at one of these meetings
12 the Defendant Winston mentioned that he was contemplating
13 raises and that he wanted to go into larger aircraft
14 which would be more complicated and more interesting for
15 the pilots, but if the union was successful in
16 negotiations with the employees, he would forego all his
17 future plans?

18 A I remember him saying that. I don't know if I told that
19 to the --

20 Q Which meeting was that at?

21 A Are you saying -- I remember Winston saying -- discussing
22 the issue, but I don't remember saying it to Worst, no.

23 Q Well, at which of these two meetings that you have just
24 related you were present at did Mr. Winston say this?

25 A It would be the first meeting.

1 Q Now, you have reviewed the transcript of Mr. Bell's
2 statements made in the first meeting, is that correct?

3 A Yes.

4 Q And if I recall your testimony, what Mr. Bell said was
5 substantially reproduced in that transcript?

6 A Yes.

7 Q Did Mr. Bell say anything in addition to that, to your
8 recollection?

9 A No.

10 Q Did he say anything about flying with the copilots?

11 A No.

12 Q Nothing?

13 A Nothing.

14 Q Did he say anything like, I fly with you, we fly the
15 same equipment, the same airplanes?

16 A Nothing like that.

17 Q Nothing like that?

18 A Not that I can recall.

19 Q I try to appreciate you on your good days and stand
20 behind you on your bad days, anything like that?

21 A I don't know if those were the correct words, but I do
22 recall that he did say something that he stood by us
23 when we have problems and tried to deal with us
24 philosophically.

25 Q Excuse me?

1 A And try to deal with us philosophically.

2 Q He said, I try to deal with you philosophically?

3 A Yes, individually and as a group.

4 Q But he said nothing about flying with you at the time?

5 A I don't recall him saying that, no.

6 Q Do you deny that he said it?

7 A I don't recall it.

8 Q He may have said it?

9 A I really don't recall that.

10 Q Mr. McDougald, please just answer my questions.

11 A I deny it, I don't recall it.

12 Q You deny that he said it?

13 A I don't remember, no, I deny it.

14 MR. CHALENSKI: That's all, Mr.

15 McDougald.

16 THE COURT: You are no longer with
17 the company?

18 THE WITNESS: That's correct.

19 THE COURT: When did you leave?

20 THE WITNESS: It would be July '75.

21 What I did was took a leave of absence.

22 THE COURT: When was that?

23 THE WITNESS: July '75.

24 THE COURT: And did you leave voluntarily?

25 THE WITNESS: Yes.

1 THE COURT: All right.

2 THE WITNESS: I gave them a couple months'
3 notice that I was leaving.

4 THE COURT: You are excused.

5 (Witness excused.)

6 MR. RICHARDS: The defendants call
7 Donald Reeve.

8
9 DONALD M. REEVE,
10 having been called as a witness on behalf of Defendant
11 Winston, was first duly sworn according to law and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. RICHARDS:

15 Q Mr. Reeve, may we have your full name and address, please.

16 A Donald M. Reeve, 328 Chemung Street, Waverly, New York.

17 Q And for whom are you employed?

18 A Employed by Commuter Airlines.

19 Q And in what capacity?

20 A As a captain.

21 Q And how long have you been employed by Commuter?

22 A Five and a half years.

23 Q And do you hold any special positions other than pilot
24 with Commuter?

25 A I am a manager for the Elmira operation, satellite

1 operation.

2 Q How long have you been manager of the Elmira operation?

3 A About, oh, two -- excuse me, one and three-quarters years.

4 Q Now, Mr. Reeve, I would like to take you back to the
5 fall of '74. Do you recall attending any captains'
6 meeting at Michael Kleitz's home?

7 A Yes, sir.

8 Q And do you recall the approximate date of these meetings?

9 A Not total recall. I think it has been mentioned around
10 October 2nd.

11 Q Did you attend one or two meetings?

12 A I attended one.

13 Q Do you recall if Mr. Bell was present at that meeting?

14 A He was present.

15 Q And would you briefly tell us what was discussed at that
16 meeting?

17 A We generally discussed a possibility of organization of
18 the pilots of the company to form a collective group,
19 and we also discussed getting counsel, a labor type
20 lawyer, and I think this was pretty well discarded
21 because of the cost involved.

22 Q Were any decisions made by the group that night at this
23 meeting?

24 A Well, this was a daytime meeting.

25 Q That daytime meeting?

1 A Well, there was no real conclusions.

2 Q Now, did you have occasion to attend a captains' meeting
3 at which Mr. Winston spoke to the group?

4 A Yes, sir.

5 Q And do you recall approximately when that meeting was
6 held?

7 A I don't know the exact date.

8 Q Do you recall if it was in the morning or afternoon?

9 A It was in the morning.

10 Q How long did Mr. Winston speak to the group?

11 A Approximately three-quarters of an hour.

12 Q And did Mr. Bell speak to the group?

13 A Yes, sir.

14 Q And do you recall how long he spoke?

15 A Probably five minutes.

16 Q All right. Now, Mr. Reeve, I show you Government
17 Exhibit 33A and ask you if you have had an opportunity
18 to read a copy of that transcript this morning.

19 A I have had a copy -- time to read this transcript, yes,
20 sir.

21 Q Yes. And you read a transcript this morning?

22 A Yes, sir.

23 Q Now, could you tell us if what Mr. Winston said at the
24 captains' meeting is substantially what appears in the
25 transcript you read?

1 A It is substantially the same with the exceptions that
2 it was pointed more towards the captain's position
3 rather than a copilot's position.

4 Q Okay. Now, were there any additional things said by
5 Mr. Winston at the captains' meeting which do not appear
6 in this transcript, you can recall?

7 A It is basically the same content.

8 Q All right. Do you recall Mr. Winston stating at this
9 meeting that if the union was voted in, he would cut
10 routes, padlock the doors, retire, pull in his forms?

11 A No, those aren't the exact words. I will elaborate, if
12 you would like.

13 THE COURT: I would like you to.

14 THE WITNESS: Okay, sir.

15 My impression is, if the union were
16 to come in, be voted in or if he is going to have
17 to negotiate with the union and it became cost
18 prohibitive for him to operate to the full extent,
19 that he may have to cut back operations, possibly
20 deletions of some of the routes, and if it came
21 to the point where he felt that he could not make
22 a profit or continue in business, that he would stop
23 or cease operations.

24 BY MR. RICHARDS:

25 Q All right. Is there anything else you can recall him

1 saying?

2 A That is my impression.

3 Q What about Ted Bell, what do you recall he said?

4 A The basic thing to Mr. Bell's speech was that he wanted
5 us to support him rather than the union, that he had
6 been good to us in the past as far as deviations we
7 might have had, small deviations, and that more or less
8 if we play ball with him, or he has played ball with us,
9 would we please play ball with him.

10 Q Is there anything else that you can recall he said?

11 A I can't recall any other.

12 Q Following this meeting, did you have occasion to go into
13 the office of Mr. Winston and discuss union matters?

14 A I discussed -- I didn't discuss, really. I was counseled
15 at one meeting between Mr. Winston and myself, yes.

16 Q All right. Was this meeting scheduled by the office
17 for you to come in?

18 A Yes, it was.

19 Q And what did Mr. Winston say to you when you went into
20 the office?

21 A He mainly reiterated his past speeches to the group, as
22 far as -- let's put it -- I'm trying to phrase it here
23 properly. His dislikes for a union type operation and
24 shop, as far as the advantages or disadvantages to
25 having a union and to reiterate his position that he

1 would rather be -- try to solve the problems within the
2 company himself, having an open-door policy and things
3 like this.

4 Q So what did you say to him?

5 A I didn't say anything.

6 Q Is that everything you can recall he said?

7 A Just basically discussed the matters that he had
8 previously discussed at meetings, open meetings.

9 Q How long would you estimate this conference with Winston
10 lasted?

11 A Approximately a half an hour.

12 Q Did you have any further conferences with Winston?

13 A No, sir.

14 Q Did you attend any other meetings at which Winston or
15 Bell addressed the group?

16 A I can't recall.

17 THE COURT: Did he ask you any
18 questions?

19 THE WITNESS: No, sir.

20 THE COURT: He didn't ask you any?

21 THE WITNESS: In that personal
22 confrontation?

23 THE COURT: Yes.

24 THE WITNESS: No, sir, he didn't.

25 THE COURT: He asked no questions at all?

1 THE WITNESS: He asked no questions at
2 all.

3 THE COURT: Not even, how are you?

4 THE WITNESS: Well, general, sir. I
5 went in and I felt it was in my best interests if
6 I kept quiet and let the man talk. It was his
7 privilege to say something. I didn't question him
8 because I really didn't care to get into it.

9 THE COURT: No. He didn't question you,
10 that is what I want to know.

11 THE WITNESS: No, he did not question me
12 and I did not wish to get into a discussion with him on
13 the matter.

14 MR. RICHARDS: No further questions.

15 CROSS-EXAMINATION

16 BY MR. CHALENSKI:

17 Q Mr. Reeve, you gave your first ballot to the Defendant
18 Winston, is that correct?

19 A I never gave any ballot to anybody except the mail.

20 Q You did vote in the election?

21 A Yes, sir.

22 Q Did you vote for or against the union?

23 A I voted for the union.

24 THE COURT: Did Winston ask for your
25 ballot?

1 THE WITNESS: At no time did he ask
2 for my ballot, and that's the truth.

3 THE COURT: I hope everything you are
4 saying is the truth. You just swore to tell us the
5 truth.

6 THE WITNESS: That's true, and I want
7 to emphasize though, he never asked me for my ballot.

8 BY MR. CHALENSKI:

9 Q Mr. Reeve, when the Defendant Winston was speaking, you
10 related your impression that if union was to come in and
11 then you said, or negotiate, was there a purposeful
12 difference in saying that?

13 MR. SHANAHAN: Could I have that
14 question read?

15 A I am just using it. As far as I am concerned, it is
16 a matter of semantics.

17 MR. SHANAHAN: Could I now have the
18 question and answer, please?

19 (Pending question and answer were
20 read back by the reporter.)

21 THE COURT: Mr. Reeve, how long did
22 you say you have been with Commuter Airlines?

23 THE WITNESS: Five and a half years,
24 sir.

25 THE COURT: And when were you put in

1 charge of the Elmira operation?

2 THE WITNESS: September 1974.

3 THE COURT: When in September?

4 THE WITNESS: Well, it was understood,
5 let's put it this way, it was understood that I would
6 be in charge of the Elmira operation towards the end
7 of July of 1974. We started operations in Elmira
8 the 3rd of September 1974 at which time my duties
9 commenced.

10 THE COURT: 3rd of September?

11 THE WITNESS: Yes, sir.

12 THE COURT: But you don't live in
13 Elmira?

14 THE WITNESS: I live in Waverly, New York
15 which is about a 30-minute drive.

16 THE COURT: Did you move there from
17 Binghamton?

18 THE WITNESS: No, sir.

19 THE COURT: Did you change your setup
20 when you went to Elmira?

21 THE WITNESS: No, sir. Let me give you
22 a little background. I have been flying the mail,
23 strictly the mail from Elmira, the place of origin,
24 since January of 1971 and that wasn't my place of
25 employment since that time. This was coincidental

1 that he started the Elmira operation and I had been
2 there and was familiar with the employment and general
3 personnel involved.

4 BY MR. CHALENSKI:

5 Q I will get to the Elmira operation in a second. When
6 you say it is a semantical difference, is what you are
7 saying really then, it is substantially the same thing
8 whether the union gets in and negotiates?

9 A Yes.

10 Q Is it all one and the same package?

11 A That it is one and the same thing, yes.

12 Q So is what you are saying in effect that Mr. Winston
13 said that once the union came in, at that point it would
14 have to be considered whether other action would have to
15 be taken, such as closing the company, cutting the routes
16 and so forth?

17 A Cutting routes, and if it came down to the nitty gritty,
18 it would have to possibly close the company because the
19 cost would be prohibitive as far as our salaries or
20 whatever.

21 Q Now, who would have the choice to do that?

22 A Mr. Winston has that choice, he is the president of the
23 company.

24 Q And did he indicate to you that that action was going to
25 be taken no matter what happened if the union got in?

1 A He did not positively indicate that he was going to take
2 -- it was going to take place. He indicated that if
3 negotiations with the union became -- the cost involved
4 were so great that he would have to cut back in his
5 activities.

6 Q He had several alternatives, he, in his own choice,
7 could have taken, is that correct?

8 A That he could cut back on operations, consequently
9 laying off personnel, possibly, or if it became cost
10 prohibitive, he would close his company.

11 Q Mr. Reeve, in regard to your Elmira operations, a
12 Robert Slough left for Rochester for an examination.
13 Was it an eye examination, do you know?

14 A I can't recall what type of an examination or when the
15 date was that he left, very frankly.

16 Q Okay. It was sometime in September?

17 A I'm not sure.

18 Q It was after you went to Elmira?

19 A Could have been. I just can't recall the specific
20 instance. I remember about it, but I can't recall the
21 specific instance that it happened.

22 Q You can't recall that Bob Slough left for Rochester and
23 whether or not he told you anything about that?

24 A No, I can't recall it. If you understand, I am manager
25 of the Elmira operations. However, most pilot activities

1 are handled through me to Ted Bell or directly to Ted
2 Bell.

3 THE COURT: At the time you had this
4 talk with Winston, this private talk with him, were
5 you manager then of the Elmira operations?

6 THE WITNESS: Yes, sir.

7 THE COURT: And how long had you been
8 the manager at that time?

9 THE WITNESS: Approximately two months.

10 THE COURT: And did you get a raise in
11 pay when you became the manager of the Elmira operations?

12 THE WITNESS: No, sir.

13 THE COURT: You stayed at the same pay?

14 THE WITNESS: Same pay.

15 BY MR. CHALENSKI:

16 Q Mr. Reeve, Robert Slough was fired for, among other
17 reasons, using improper radio practices.

18 The testimony has been entered to that
19 effect, and testimony has been that you and Michael
20 Kleitz made the complaint.

21 A I didn't make any complaint.

22 THE COURT: Did you take on more
23 responsibilities when you became manager?

24 THE WITNESS: Yes, sir.

25 THE COURT: Was there any hope on your

1 part for a raise in pay for those added responsibilities?

2 THE WITNESS: Yes, sir.

3 THE COURT: Had Mr. Winston said
4 anything about a raise if it worked out?

5 THE WITNESS: He indicated if the
6 Elmira operations went well and it was a successful
7 venture, that I would receive some monetary advantage
8 to it.

9 THE COURT: When did he say that?

10 THE WITNESS: This was at the time that
11 the Elmira -- just before the Elmira operation went
12 into effect.

13 THE COURT: Had you asked for a raise?

14 THE WITNESS: No, sir.

15 THE COURT: You just volunteered
16 when you took the job?

17 THE WITNESS: I volunteered to do
18 the job, yes, sir.

19 THE COURT: And he volunteered to
20 give you a raise if things went right?

21 THE WITNESS: Yes, sir, yes, sir.
22 Would you restate the previous question?

23 BY MR. CHALENSKI:

24 Q Mr. Reeve, did you complain in any manner about Robert
25 Slough's radio procedures?

1 A Mr. Bell discussed this with me.

2 Q When?

3 A I think it was just prior to him going to Elmira, that
4 he wasn't the best as far as the radio procedures.

5 Q Mr. Bell said that to you?

6 A Yes. Just let me sidelight it for a minute. Up to this
7 time, I had been flying the mail, and most of the
8 time up to just two years prior to September '74, I
9 flew the mail and I was doing it by myself. I didn't
10 fly the line as far as passengers were concerned and
11 was basically unfamiliar with the copilots in the
12 company. So we will get back to this. Mr. Bell stated
13 that he wasn't the best as far as radio procedures and
14 I said, okay, I'll work with him and I'll observe his
15 radio procedures. And I will say this, that I didn't
16 find him particularly objectionable.

17 Q You will say this, you mean --

18 A I will say that his radio procedures weren't that totally
19 unacceptable to me. How is that?

20 Q Were they at all unacceptable, were they average?

21 A Pardon me?

22 Q Were they average, like any copilot's?

23 A They were average.

24 THE COURT: Were they adequate?

25 THE WITNESS: Adequate for the amount

1 of experience the individual had.

2 THE COURT: For the job?

3 THE WITNESS: Yes, they were adequate
4 for the job. It is my job to see that he says the
5 right thing and I will correct any copilot if he says
6 the wrong thing.

7 BY MR. CHALENSKI:

8 Q Now, during the captains' meeting on October 5th, 1974,
9 which you attended, you testified that you reviewed this
10 transcript and the statements the defendant set forth in
11 it, is that correct?

12 A This is a transcript from a copilots' meeting. It is
13 basically the same, what Mr. Bell said, basically the
14 same.

15 Q Okay. Did the Defendant Bell say anything about flying
16 with him during the course of that meeting?

17 A Yes, I think he referred that in the part that I have
18 already iterated earlier, that he has overlooked some
19 of our minor deficiencies or momentary deviations from
20 the normal --

21 Q Was that with reference to flying?

22 A That's with reference to flying. And that we get along
23 just fine. He knows that we can do the job overall
24 and that he was looking for our support, to support
25 him in combating this union activity.

1 THE COURT: What happens if Bell
2 should flunk you in your check rides?

3 THE WITNESS: Well, I have thought
4 that over and I feel my recourse would be to demand
5 a check ride from the Federal Aviation inspector.

6 THE COURT: But what happens if he
7 flunks a pilot or a copilot?

8 Can he fly after that?

9 THE WITNESS: No, he shouldn't fly,
10 as far as I know. He should go through a corrective
11 action process, either ground study or practical
12 experience in the aircraft to correct the deficiency.

13 THE COURT: Is he grounded if he
14 flunks his check list?

15 THE WITNESS: I'm not sure, sir, if
16 the regulations say he has to be grounded or not.

17 THE COURT: Is he usually grounded?

18 THE WITNESS: No, sir, I don't think
19 he is usually grounded.

20 THE COURT: Even though he fails his
21 check ride, he flies passengers around?

22 THE WITNESS: It is usually -- a
23 copilot is not -- if a captain flunks his check ride,
24 he does not fly passengers. If a copilot flunks his
25 check ride, depending on the area, I think he is

1 allowed to continue. Now, I'm not sure. Mr. Bell
2 could probably -- or a Federal Aviation inspector
3 can better answer that question because I have
4 never been confronted with it.

5 BY MR. CHALENSKI:

6 Q To retake the check ride before an FAA examiner, who
7 provides the plane?

8 A I don't know.

9 Q Well, does the FAA provide the plane?

10 A No.

11 Q You have to get it somehow yourself?

12 A I would take that step, yes.

13 Q To be checked out in a Metro liner, you would have to
14 somehow get a Metro liner to take a check ride in?

15 A I don't think necessarily I would have to, unless it was
16 -- yes, I might have to rent one to get a check ride for
17 a specific item that I failed.

18 Q And might some of those -- well, strike that.

19 A It goes at a pretty high price, yes.

20 Q Now, how many check rides have you flown with Defendant
21 Bell in the five and half years you have been with the
22 company?

23 A Probably 11 or 12.

24 Q And have you flown any on route checks with him?

25 A Yes, sir.

1 Q And roughly how many?

2 A ✓ On route checks, probably five or six official route
3 checks. However, in recent years, the FAA has taken
4 over that job.

5 Q Since you have been a captain, have you flown with
6 the defendant, Bell, on other occasions?

7 A Maybe three or four, and it is just that we both got --
8 I was an extra man on a crew. I was deadheading from
9 one place to another and I just got in the right seat
10 and flew with him as a copilot, just to be up there.
11 Sometimes we might, on route, discuss company business
12 or thrash something out. and I just had an opportunity
13 to talk to him. I would just sit in the right seat and
14 do it.

15 Q About three times, around there?

16 A That's about it, yes.

17 THE COURT: When you say deadhead,
18 does this airline go to Waverly?

19 THE WITNESS: It goes to Elmira, sir.

20 THE COURT: There is no operation
21 from Waverly at all?

22 THE WITNESS: No, sir, that is just
23 my home.

24 BY MR. CHALENSKI:

25 Q One final question. If Mr. Slough did call you up to

1 visit Rochester, would you feel that your position gives
2 you the authority to grant him permission?

3 A Not final permission, no, sir.

4 Q Well, if he is not scheduled?

5 A If he is not scheduled, then I have the final say on it,
6 yes.

7 Q You would say you are not scheduled, Bob, okay, go ahead?

8 A Yes, sir.

9 MR. CHALENSKI: That's all I have.

10 Thank you, Mr. Reeve.

11 MR. RICHARDS: No questions.

12 THE COURT: You are excused.

13 (Witness excused.)

14 THE COURT: We will take a short recess.

15 (Recess was taken.)

16 (Trial resumes.)

17 THE COURT: All right, proceed.

18 MR. RICHARDS: The defendants call

19 Mary Persons.

21 MARY PERSONS,

22 having been called as a witness on behalf of Defendant

23 Winston, was first duly sworn according to law and testified

24 as follows:

25

1 DIRECT EXAMINATION

2 BY MR. RICHARDS:

3 Q Miss Persons, where do you reside?

4 A Where do I reside?

5 Q Yes.

6 A 212 Harding Avenue, Endicott.

7 Q I realize you have a cold, so I will keep my voice up.

8 A Thank you.

9 Q For whom are you employed?

10 A I am employed by Commuter Airlines.

11 Q And how long have you been employed by Commuter?

12 A I came there October 15th, 1967.

13 Q And currently what is your position with Commuter?

14 A I am office manager.

15 Q And how long have you held that position of office
16 manager?

17 A Eight years.

18 Q And as office manager, what do your duties include?

19 A Well, I do the payroll, I do compensation, insurance,
20 accounts receivable, answer the telephone. I am in
21 charge of seven girls, six other girls that work in the
22 office. Rather varied duties.

23 Q All right. Do you have any contact with the pilots in
24 your duties?

25 A Slight.

1 Q All right. Now, Mary, I would like to refer you back to
2 December of 1974. Did you overhear the conversation
3 between a pilot by the name of William Lamos and Irene
4 Winston?

5 A Yes, I did, sir.

6 Q And would you relate to the Court and jury just what
7 you heard?

8 A Yes, I will. Bill Lamos came in the office from a
9 scheduled flight and was due to take a shuttle flight
10 from Binghamton to Elmira which was due to go out any
11 time. He came in the office and walked over to the girl
12 that was working next to me, has the desk next to me and
13 he started carrying on a conversation with her.

14 Q What was the name of this girl?

15 A What was what?

16 Q Name of the girl.

17 A Ann Gummoe. Now, I did not hear what Bill said to her,
18 but they had only been talking about a minute or two.
19 Mrs. Winston was standing at the scheduling book which
20 was about five or six feet away from them and she
21 stepped over and she said, "What is the trouble?" And
22 Bill turned around to her and he said, "They want me to
23 test fly this airplane and I am not going to do it."
24 He said, "I'm scheduled to go out on this flight and
25 I have onepassenger and I am not going to keep that

1 passenger waiting."

2 Mrs. Winston says, "Well, you can't take
3 the flight right now. This aircraft has been in the
4 shop and it has to have a test flight before it can be
5 flown. You are the only pilot here to do it and it is
6 the only aircraft that is available. It will not take
7 long and we will advise the passenger that the flight
8 will be going in probably about a half hour."

9 And at that point they got into rather
10 a heated discussion about various things pertaining to
11 the scheduling of things.

12 Q Do you recall what was discussed?

13 A Well, he told her, this is one instance of the type
14 thing that it was, he told her, he says, "You are to
15 blame for all of the errors that I made in here as far
16 as scheduling goes, and everything that goes wrong, it's
17 your fault."

18 Well, she gave him some answer, I don't
19 know. She was speaking much more quietly than he was.
20 And he turned to her and he says, "You're a liar," he
21 said, "You wouldn't recognize the truth if you saw it."

22 So at that point, as I say, I was sitting
23 at my desk, I got up and went to the door of Mr.
24 Winston's office.

25 Q Was there -- go ahead, I'm sorry.

1 A And he was having a meeting with two gentlemen.
2 Normally I would not bother him, but I went in and I
3 excused myself and I said, "I think that you should come
4 out here in the office. I feel that Mrs. Winston is
5 being subjected to more than she should be and I think
6 you better come out and see what is going on."
7 He got up immediately. He excused himself from his
8 guests and he got up immediately and we started out of
9 the office, and as we got back to the scheduling book,
10 both of us, Mrs. Winston said to Bill Lamos, "Am I to
11 understand that you are refusing to fly this flight?"
12 and he said, "Yes, I am."

13 And she says, "Well, I guess you just
14 quit then." And he says, "You said that, I didn't."
15 And he turned around and walked out. And that's all
16 I know.

17 I didn't see him again.

18 Q Did you overhear any conversation between Lamos and
19 Mr. Winston?

20 A Mr. Winston just got out there. I don't think he had
21 a chance to say anything. As I say, this one comment
22 was made and he turned around and walked out of the
23 office, and he never came back.

24 Q Now, can you tell me how long that exchange lasted, to
25 your best estimate?

1 A I would say 20 minutes.

2 Q From the time Mr. Lamos started speaking?

3 A That he came in the office until the time it was
4 finished, yes, sir.

5 Q And have you told us everything you can recall regarding
6 that conversation?

7 A Yes, Yes, I have.

8 MR. RICHARDS: Thank you. No further
9 questions.

10 CROSS-EXAMINATION

11 BY MR. CHALENSKI:

12 Q Mrs. Persons, are those the exact words that were used
13 by each party a year and a half ago?

14 A What I told you is the exact words. I was very much
15 impressed with this conversation because it is very
16 unusual to hear anything of this type in a business
17 office. There were probably other parts, words that I
18 do not remember; what I told you I do remember.

19 Q So there is no doubt in your mind that those are the
20 exact words used?

21 A That's correct.

22 Q And it is not in substance, those words?

23 A That is correct.

24 MR. CHALENSKI: Thank you, Mrs. Persons.

25 MR. RICHARDS: No questions.

1 THE COURT: You are excused.

2 (Witness excused.)

3 MR. RICHARDS: Your Honor, may we
4 approach the bench?

5 THE COURT: Yes.

6 (Off-the-record discussion at bench.)

7 MR. RICHARDS: The defendants call
8 Jerry Winston.

9 JERRY WINSTON,
10 a defendant, having been called as a witness in his own
11 behalf, was first duly sworn according to law and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. RICHARDS:

15 Q Mr. Winston, could we have your full name and address,
16 please.

17 A Yes, sir. My name is Jerry Winston. I live at
18 3125 Briarcliff Avenue in Vestal, New York.

19 Q And are you a defendant in this action?

20 A I am.

21 Q And are you the owner of Commuter Airlines, Inc.?

22 A Yes, sir.

23 Q And the Broome County Aviation, Inc.?

24 A Yes, sir.

25 Q Now, Mr. Winston, when was Commuter Airlines, Inc. first

1 formed?

2 A Commuter Airlines was incorporated in 1964.

3 Q Now, at the time it was incorporated, what was its
4 principal operations?

5 A Well, Broome County Aviation was a parent company and
6 that was formed in 1958 and we located at the Broome
7 County Airport. I was asked by the officials of the
8 county to come to their airport. They were having a
9 problem and they felt that I was qualified to straighten
10 this particular problem --

11 MR. CHALENSKI: I object to what they
12 felt.

13 THE COURT: Sustained. Strike it out.

14 BY MR. RICHARDS:

15 Q Just relate the formation of those two corporations.

16 A Yes, sir. Our Broome County Aviation was incorporated
17 in 1958 and we commenced operations in Broome County
18 Airport. The purpose of our operation was to run what
19 we called a fixed base operations at the Broome County
20 Airport.

21 Q Now, what are the duties of a fixed-base operation?

22 A A fixed base operation is responsible to provide
23 maintenance service on the airport for aircraft, both
24 residing and arriving at the airport, fuel
25 service. We are responsible for providing charter

1 service to corporations or individuals, for a flying
2 school and all related aviation services other than
3 schedule service.

4 Q At the time these corporations were formed and starting
5 operations, how many employees were on the payroll?

6 A We had about four employees.

7 Q And do you recall how many aircraft you had?

8 A Two.

9 Q Now, did the extent of your operation expand as time
10 went on?

11 A Yes, it did.

12 Q And would you describe to us what additional operations
13 were undertaken by these corporations?

14 A In 1962 we started scheduled operations for a private
15 corporation and we ran two round trips daily from
16 Binghamton to Utica and two round trips daily from
17 Binghamton to Schenectady. This is where we got the
18 basic training for scheduled operations.

19 In 1964 we decided that we would open
20 this service to the public.

21 Q And by opening the service to the public, did that mean
22 that you started scheduled runs to other major cities?

23 A Yes, sir. Our first schedule started in September of
24 1964 and we ran two scheduled operations from Binghamton
25 to Washington, D.C.

1 Q All right. Presumably over the years, the business grew,
2 is that correct?

3 A Yes, it did. Our fleet increased so that at the time
4 in question, 1974, we had 14 aircraft and the size was
5 quite different. When we started, we had a two-seater
6 plane which was used for training. It was a single engine,
7 and we had a four-seater aircraft which was used for
8 charter work, and that was a single engine.

9 In 1974 all our aircraft were multi-
10 engine, and I believe we have one single-engine aircraft
11 left which we used in our school.

12 Q Now, in 1974, early part of '74, how many aircraft
13 were you operating?

14 A I would estimate that we were operating 11 aircraft.

15 Q Okay. Now, is the business divided into various
16 departments with responsibilities by those departments?

17 A Yes, the departments are basically the flight
18 department --

19 Q Now, the flight department would consist of the pilots
20 and copilots?

21 A Yes.

22 Q And what other departments are there?

23 A Maintenance department.

24 Q And Mr. Warner is in charge of that department?

25 A Yes, he is.

1 Q And what are the general responsibilities of the
2 maintenance department?

3 A They have responsibility for maintaining our aircraft,
4 doing normal inspections, do repairs, modifications,
5 keep inventories that are adequate to properly service
6 our aircraft, and as well to serve aircraft that are not
7 owned by our own company.

8 Q Is there a line division in one of these departments?

9 A Yes, sir, we have the line service and the function of
10 the line service is to handle our aircraft, getting in
11 and out of the hangars.

12 In times of severe icing conditions, it
13 is their job to treat the aircraft, to put what we call
14 anti-icing fluids on aircraft. They do the fueling of
15 the airplanes and servicing transient aircraft that
16 may need fueling and related services.

17 Q Now, is the operation of Commuter for scheduled service
18 under the jurisdiction of any federal agency?

19 A Yes, the Federal Aviation.

20 Q And is there a particular regulation or regulations
21 dealing specifically with this type of operation, if you
22 know?

23 A Yes, there are.

24 Q And would you, again, referring to the year '74, would
25 you briefly explain the type of context you would have

1 with this federal agency regarding the operation?

2 A The Federal Aviation agency controlled our operation.
3 Their function was to see that we abide by the
4 regulations that had been set down and their standards
5 kept up. There are minimum standards set up by the
6 Federal Aviation agency and in doing this we received
7 frequent inspections.

8 Sometimes it would be one inspector
9 would come down to perform an individual function and
10 other times they would have teams, 10 or 12 inspectors
11 who would do the same.

12 Q Now, when you talk about inspections, is this
13 inspections regarding flight tests or equipment?

14 A Both.

15 Q All right. And with regard to flight tests of the
16 pilots, what was the customary procedure followed by the
17 FAA at this time?

18 A Customary procedure was to designate somebody within our
19 company who would be responsible for the periodic
20 proficiency check flights, on route flights, and it
21 was also their function to spot check us. The spot
22 checks were at frequent intervals and at random.

23 Q Now, what do you mean by a spot check?

24 A Well, if we gave a proficiency check, they may come in
25 and say, who is scheduled for the next proficiency check.

1 we want to do the check instead, and they would do the
2 spot check.

3 Q Would you have any advance notice as to whether or not
4 a spot check was to be taken?

5 A No, not normally, I should say.

6 Q When did you first learn that a flight check was going
7 to be undertaken by an FAA agent?

8 A They day they were done they would say well, I would
9 like to do so many on route checks, so many proficiency
10 checks, and they would say, which flights do you have
11 going out and, okay, I will spot check flight 100 to
12 Washington and so on.

13 Q How about the pilot being selected for the testing?

14 A I think they examine the records and indicate whom they
15 would like to check.

16 Q And what is the nature or type of record required by
17 you to be kept by the FAA?

18 A Well, we are required to keep copies of the pilots'
19 certificates, copies of his six-month medicals, copies
20 of his check rides. I would say essentially, that,
21 or in that area.

22 Q Now, you earlier said that the FAA was responsible for
23 inspecting the equipment, is that right?

24 A Yes. Well, they are responsible for supervising the
25 way we maintenance our equipment.

1 Q Will you explain to us the manner in which they would
2 supervise the way you maintained equipment?

3 A All right. They would spot check our recordkeeping.
4 They would spot check to see if indeed all inspections
5 were done according to the regulations, whether they
6 were done according to our manuals, that is, our
7 operations manuals when we are supposed to do it,
8 whether we actually had good control of the inspection
9 system. They would also go out into the shop and
10 witness maintenance. They frequently would spend two
11 to three weeks with us continuously from morning until
12 evening.

13 Q All right. Now, did there come a time in 1974 when you
14 first learned about some union activity at the premises?

15 A Yes, sir.

16 Q And do you recall approximately when you first learned
17 of this activity?

18 A I would say the early part of October or the latter part
19 of September.

20 Q Now, you heard discussion and perhaps have seen an
21 exhibit of a letter dated September 24th, 1974. Did you
22 ever recall seeing that letter before?

23 A Yes, I did.

24 Q And do you recall when you saw that letter, was it on
25 or about that date?

1 A I would say it was about the time I described in my last
2 answer.

3 Q And is that when you first learned that there was some
4 union activity?

5 A Yes.

6 Q You have heard testimony about captains' meetings being
7 held at the home of Michael Kleitz. Did you have any
8 knowledge of that?

9 A No, not -- if I may qualify it, not until about a month
10 ago, month before the trial.

11 Q You mean at the time we were preparing for the trial?

12 A Yes.

13 Q Now, there has been some testimony that the Teamsters
14 union had an organizational meeting on either October 2nd
15 or October 3rd. Did you have any knowledge of that
16 meeting whatsoever?

17 A Not at all.

18 Q Now, no one spoke to you about that meeting?

19 A I had no knowledge of it.

20 Q Did Ted Bell speak to you about it?

21 A He did not.

22 Q John Harrington?

23 A No.

24 Q Hugh McDougald?

25 A No.

1 Q There came a time on October 3rd, 1974, when three pilots,
2 Robert Slough, Ira Josephson and Michael Baan were dis-
3 charged; do you recall that?

4 A Yes, sir.

5 Q Now, would you tell the Court and jury the circumstances
6 surrounding their discharge?

7 And first, start with Robert Slough.

8 A Yes. I had a conference with Ted Bell just prior to
9 their discharge, I would say perhaps a week or so prior,
10 and indicated that I felt that our plans had gone awry,
11 that we did not evaluate the situation, or at least as
12 it had occurred, the economy was going sour. We had
13 gotten ourselves pretty deeply in debt. We had ordered
14 new aircraft which we cannot use and will not use --

15 Q Incidentally, speaking of the new aircraft, what air-
16 craft are you referring to?

17 A Well, essentially, it is our Metro three and four. We have
18 a total of four Metros.

19 Q When did you buy the first Metro?

20 A The first Metro, we negotiated for the first Metro in
21 1972.

22 Q And you eventually bought that Metro?

23 A The Metro was delivered to us in 1973. It took about
24 a little over a year to get delivery.

25 Q Now, what was the purchase price of that Metro?

1 A The purchase price, our price was somewhere around
2 six, six hundred fifty thousand dollars per plane.

3 Q Now, there are additional costs besides the plane, is
4 that correct?

5 A Yes, I would say.

6 Q What are those additional costs?

7 A Okay. Additional costs, when you go into a new aircraft,
8 and this was a new aircraft to us, as a matter of fact
9 it was a new aircraft to the industry, we were the first
10 in the country to buy these airplanes --

11 MR. CHALENSKI: Your Honor, I object
12 to that characterization. It is irrelevant.

13 THE COURT: Overruled.

14 A And when we go into a new aircraft, we tool up for it
15 because we not only operate these airplanes, but we
16 maintain them, we get authorizations to do all the
17 maintenance possible in the field that we are capable
18 of doing, which means that we have to tool up to
19 overhaul the engines, or go as far into the overhaul
20 as the manufacturer will permit us, so we have to buy
21 all the tools necessary for this, all the spare parts.

22 Q Now, excuse me. Do you have an idea as to the
23 approximate cost of these parts?

24 A I would say that is about \$300,000.

25 Q This is over and above the purchase price?

1 A Over and above the purchase of the aircraft.

2 Q Now, once you decide to put into operation a new aircraft
3 such as a Metro, what procedure do you follow regarding
4 the staffing of this aircraft?

5 A The training or the staffing?

6 Q Yes.

7 A All right. Since the aircraft -- we are a relatively
8 small company and the amounts of money are gigantic
9 for the size of our company as well as companies in the
10 commuter industry, and once an airplane arrives, this
11 airplane has got to be put to work right away. They
12 can't sit around. The interest costs are relatively
13 severe. The bank payments are relatively severe for
14 our size, and as a result we hire crews, mechanics,
15 other staff as we feel necessary so that when the
16 airplanes arrive, these people are on hand, trained,
17 ready to go to work. And in the case of our first two
18 Metros, this is exactly what we did. The airplane
19 arrived and it was put into service immediately.

20 Q Now, when did you buy your third Metro?

21 A The third Metro was purchased -- we negotiated for it
22 in mid-1973 and they were delivered July or August 1974.

23 Q And was there a fourth Metro delivered before
24 September '74?

25 A Just before.

1 Q Just -before?

2 A Two weeks before.

3 Q Now, with regards to the training of pilots for those
4 Metros, could you estimate as to when you took steps
5 to train pilots for those Metros?

6 A Well, the Metro, to train a crew for the Metro is a
7 long, involved procedure. You have a very expensive
8 aircraft, very sensitive aircraft, and the type of
9 training we give, the pilot must be a captain, must be
10 flying this aircraft for 100 hours of flying time.
11 A hundred hours would mean about 100 trips to Washington
12 before he can be checked out as a captain.

13 So you can see that takes quite a bit of
14 time, especially since the captain is performing his
15 normal duties, so he has to get that in between,
16 and the program has to be started relatively early.
17 A copilot is not quite as serious as a captain because
18 our standards for captains are that any pilot that we
19 have must be able to fly any airplane proficiently and
20 professionally alone, in any weather, at any time
21 without a copilot and without an autopilot.

22 Q Now, when you staff a Metro, can you estimate for me --

23 A I'm sorry, I didn't hear the earlier part.

24 Q When you acquire pilots to fly the Metro, would you
25 estimate for me when you first start training those

1 pilots in relation to when you figure the Metro will
2 arrive?

3 A Well, captains would start relatively early because they
4 have to get a hundred hours of on-line training and they
5 get, I believe, somewhere between 10 hours and 20 hours
6 of maneuvers.

7 Q All right. Are we talking in terms of a couple months
8 of training for these?

9 A A captain's program is longer than that.

10 Q Would you give me your best estimate?

11 A I would say for a captain to get the amount of training
12 he needs, it would take approximately three months.

13 Q And how much training would a copilot be required to
14 have?

15 A A copilot's training is relatively simple, and primarily
16 it is familiarity with the aircraft. We do, similarly,
17 we send him in the aircraft as an observer. He cannot
18 perform the functions of the copilot until he is so
19 qualified. We send him along as an observer. He gets
20 a lot of ground school and I would estimate that to be
21 three to four weeks.

22 Q All right. Now, you indicated earlier that at the time
23 of your conference with Ted Bell, that the situation
24 was not favorable to the company. Would you explain
25 what you meant by that?

1 A Well; in 1973, when we put our first two aircraft, first
2 two Metros in operation, they were working out relatively
3 well. They were doing a reasonable amount of flying.
4 Of course, we were the first commuter in the country to
5 operate these airplanes so they had bugs in them and we
6 had to get them out. But in spite of that, it was a
7 pretty reliable aircraft and was doing well. It was
8 well accepted by the passengers. The performance was
9 what we expected it to be. The quality of the aircraft
10 was what we expected.

11 Initially, we bought the airplane when it
12 was still on the drawing boards. It is a completely new
13 design, and so that we found that the airplane was what
14 we anticipated. We decided that we would go ahead and
15 order two more aircraft. Our initial operation, when
16 we purchased our first airplane, our operation or
17 agreement was for a purchase of a total of five airplanes.

18 Q More specifically, do you recall what factors you took
19 into account at the time you indicated to Ted that the
20 business was not as favorable as anticipated?

21 A Okay. The factors were that by the time the airplanes
22 arrived, the economy had gone sour and we were reading
23 of large industries laying off huge amounts of people.

24 Q You depend upon these people for your scheduled flights?

25 A Yes, we are talking about scheduled flights. I might

1 qualify that. Initially, our commuter operation was
2 a very small part of our operation, but as it grew,
3 the Broome County operation or fixed base operation
4 became relatively insignificant in size compared to our
5 commuter operation, and I felt that in that climate,
6 we had a cert. in purpose for ordering Metro three and
7 four, and I felt that in that climate -- let me back up.
8 The purposes were that we intended to expand our
9 schedules. We had points as Binghamton to Cleveland
10 as one of the operations, Binghamton to Boston as an
11 additional operation. We, at the time, only had one
12 flight into LaGuardia and we wanted to put six flights
13 into LaGuardia. We were negotiating with one of our
14 largest customers, IBM, and we had the contract to fly
15 the president of IBM and his staff for the past five
16 years at that time.

17 Q Now, do I understand you that at the time you ordered
18 the third and fourth Metro you were considering adding
19 these two additional cities to your schedule, Cleveland
20 and Boston?

21 A Among others.

22 Q Right. Were there others that you can think of?

23 A Yes, we had plans for operation into Baltimore and
24 plans for operation into Dulles.

25 Q Incidentally, Mr. Winston, what principal cities do you

1 service now?

2 A Presently we serve Washington, Baltimore, Newark,
3 LaGuardia, Kennedy, Westchester, Wilkes-Barre, Elmira,
4 Cleveland.

5 Q Okay. Then in September of 1974 you were not serving
6 Cleveland, is that correct?

7 A No, we weren't.

8 Q But you were serving those other cities?

9 A Well, we weren't serving Baltimore and we weren't
10 serving Dulles.

11 Q Okay. Now, at the time the Metros arrived in August
12 of '74, was any decision made regarding a scheduling
13 of flights to Cleveland and Boston?

14 A Yes, we decided that we would not go ahead with the
15 expansion program we had anticipated, that it is a very
16 precarious economic venture to start a new run. You
17 don't know if you are going to be successful or lose
18 a lot of money and we have had runs where we have lost
19 a lot of money and abandoned them. We felt in that
20 economic climate with all the large industries chopping
21 radically, that this would not be the time to start an
22 expansion program. We would have our hands full keeping
23 ourselves intact without going into any expansion
24 program.

25 Q Now, had you added any pilots to your staff in

1 anticipation of adding these new flight schedules?

2 A Yes, we had started a program of hiring. I guess the
3 greatest or the peak of the hiring was somewhere before
4 July of 1974.

5 Q And this hiring was done in anticipation of the new
6 schedules?

7 A The new schedules.

8 Q Now, again referring back to your conversation with Bell,
9 were there any other factors you took into account
10 concerning the cutback in personnel?

11 A Yes, we were negotiating with IBM for upgrading of our
12 service to them. This would be primarily the IBM
13 headquarters in Gaithersburg, Maryland.

14 Q Now, when you talk about IBM, you are now talking about
15 the charter service as opposed to commuter service?

16 A Yes, I am.

17 Q Okay. Would you go on and tell us concerning your
18 negotiations with them?

19 A Prior to ordering the Metro three and four, I had been
20 negotiating with IBM and with another company called
21 Public Loan, two of our biggest customers, and suggest-
22 ing that a Metro would fit into their operations as
23 well as the type of charter service that we were giving
24 them, and I felt encouraged to equip Metro three and
25 four with a dual interior.

1 Q What do you mean by a dual interior?

2 A The standard high density interior would be for commuter
3 passengers where you get as many seats into an aircraft
4 as it can legally contain. With an executive interior,
5 you put desks in, bars, toilets, executive over-size
6 seats, and so on. We spent \$50,000 on that program
7 in anticipation of this contract, or these contracts.

8 Q At the time you were considering this, was Public Loan
9 using your charter service on a regular basis?

10 A Extensively.

11 Q And was that also true for IBM?

12 A Almost exclusively.

13 Q Now, referring now to the Public Loan, did there come a
14 time when you learned that Public Loan would not be
15 using your service as extensively?

16 A Yes.

17 Q And about when was that?

18 A I would say just about the time our new Metros were
19 delivered.

20 Q Just about August or September '74?

21 A Around that period.

22 Q And what did you learn at that time?

23 A I learned that they were able to acquire the services of
24 the same aircraft, a similar aircraft, the same design
25 aircraft, model, manufacturer, I don't know how really

1 to describe it, with an associate located in Scranton,
2 New York, and that they had decided to share that air-
3 plane with them, and as a result they terminated their
4 use of our services almost completely.

5 Q Now, do you recall, was this a gradual reduction or was
6 it abrupt?

7 A I would say abrupt.

8 Q And can you recall approximately when this occurred?

9 A I would say sometime around perhaps September of '74.

10 Q But in any event, you learned about it in August of '74
11 or thereabouts?

12 A Yes.

13 Q Were there any other lucrative charter contracts you
14 had which were in jeopardy at this time?

15 A Yes, our contract with IBM, IBM headquarters in
16 Gaithersburg, Maryland. We were told that as we had
17 anticipated that -- we knew they wanted to upgrade the
18 service and we had anticipated that the Metro aircraft
19 would be the way to go.

20 Q When they say upgrade the service, what do you mean?

21 A Well, they wanted aircraft which were a little roomier,
22 faster, pressurized, of longer range. That is, be able
23 to go a longer distance without stopping, have better
24 facilities on board, have working areas such as desks
on board for conferences. And so we equipped the

1 Metros to be able to accommodate that requirement. It
2 was in either the latter part of September or the early
3 part of October, I think it would be in September, that
4 we were told by IBM that this is not the way they want
5 to go, they were really not interested in the Metro,
6 it wasn't quite fast enough and what they wanted was
7 a power jet, and asked me if we would submit a bid for
8 this type of service with a jet.

9 Q And what was your reaction to that request?

10 A Well, I was a little disappointed because we had put
11 quite a bit of money into this aircraft and it looked
12 like we would have no use for that particular improvement
13 or modification, and we, of course, investigated
14 providing the jet service.

15 Q And did you ultimately reject the idea of purchasing a
16 jet airplane?

17 A Yes.

18 Q Now, did that have any effect upon the amount of
19 business you were providing IBM?

20 A Yes, as a result we lost the IBM contract.

21 Q Now, if you can, give me an approximation to the extent
22 of loss the company suffered by reason of the dis-
23 continuance of IBM in a contract. Do you have any idea?

24 A Well, they provided a large part of our income, a large
25 part to the support of our corporation. I don't know

1 whether I can say ten percent or what the percentage
2 would be.

3 Q Mr. Winston, my request, based upon records maintained
4 by your department, did you prepare two graphs for me
5 demonstrating this Public Loan, IBM situation?

6 A Yes.

7 THE CLERK: Defendant's Exhibit V and
8 W marked for identification.

9 Q Now, Mr. Winston, I show you Defendant's V marked for
10 identification and ask you if you can identify that.

11 A Yes, this is a graph I prepared from our records of
12 the account of Public Loan, their sales, or their use
13 of our aircraft.

14 Q Now, if I understand the graph, it has various months
15 on the top?

16 A Yes.

17 Q Of 1974. And is this the amount of dollars in the left-
18 hand column?

19 A Yes.

20 Q And reviewing from that graph, could you tell me the
21 extent of business you had with Public Loan from
22 September '74 on, or August '74?

23 A Yes, they were purchasing from -- when? I'm sorry.

24 Q From August '74.

25 A From August '74, they were a little under \$3,000 per

1 month of flight sales, and then they dropped, and the
2 following month of September to about a thousand dollars
3 and then the following month of October they dropped to
4 zero, and pretty well extend for the rest of the year
5 around the zero point.

6 Q Did there ever come a time after that that you resumed
7 a more viable, active business with Public Loan?

8 A I would say no.

9 Q Okay. I also show you Defendant's Exhibit W and ask
10 you if you could identify that for us.

11 A This is a similar graph as the Public Loan graph giving
12 the point from July 1974 through July 1975. These
13 records or figures were obtained from our financial
14 records from within our company and the account is IBM,
15 Gaithersburg, which is the headquarters of IBM.

16 Q And will you again review for us the dollar amount gained
17 by the company from this contract, from August '74 on?

18 A Yes, in July of 1974 they were purchasing approximately
19 \$11,000 of services per month, and in August it dropped
20 to about 7,000. September it was about the same, 7,000.
21 October it went to about 8,000 and in November it went
22 to zero and remained zero from then on.

23 Q Okay. Now, Mr. Winston, were there any other factors
24 you had taken into consideration when you made this
25 decision to cut back on your staff?

1 A Yes. - You mean economic factors?

2 Q Economic reasons, yes.

3 A Well, I reviewed and tried to make a list of some of
4 those factors. May I refer to them?

5 Q Yes, please.

6 A I see here that another factor that bothered us was the
7 interest rates. We first negotiated our Metro one and
8 two and the prime rate we paid -- our interest rate is
9 based on the prime rate. The interest rate was
10 four and a half percent. This was in 1972.

11 Q And in August and September of '74 had that interest
12 rate gone up?

13 A The prime rate had gone from four and a half percent to
14 12 percent.

15 Q Were there any other factors?

16 THE COURT: How would that alter your
17 obligations?

18 THE WITNESS: Well, our cost of borrowing
19 the money.

20 THE COURT: Future costs?

21 THE WITNESS: No. We borrowed the
22 money when the aircraft was delivered. Essentially,
23 when the aircraft was delivered, we had to go to the
24 banks, get the money and pay it to the manufacturer.

25 THE COURT: What I don't understand,

1 Mr. Winston, is how an increase in the prime rate
2 increases the cost of servicing your outstanding debt.

3 THE WITNESS: Okay. Since our
4 agreement with our banks is that we will pay --
5 in relation to the prime rate we expect when we
6 ordered the aircraft, to pay at a much lower interest
7 payment. Now, based on one million dollars, if
8 the prime rate were four and a half, we would pay
9 \$45,000 a year.

10 BY MR. RICHARDS:

11 Q And in fact, what you are saying is that the interest
12 rate you would pay on a monthly or semi-annual basis
13 would be dependent upon the going prime rate?

14 A That's correct.

15 THE COURT: You mean you didn't
16 borrow the money at fixed interest rates?

17 THE WITNESS: No, sir.

18 THE COURT: You did not? You bought
19 them at variable rates depending on the prime?

20 THE WITNESS: That's right.

21 THE COURT: All right.

22 THE WITNESS: So therefore on a million
23 dollars, instead of paying \$45,000 a year, you would
24 pay a hundred -- well, we ended up paying 13 percent,
25 so we would be paying \$130,000. We were caught with

1 that cost.

2 BY MR. RICHARDS:

3 Q Were there any other factors you took into consideration?

4 A Yes. We had another contract -- or the contracts that
5 were in existence were not working out too well. That
6 is, we had been approached by these companies saying
7 that the minimum guarantees could not be met.

8 Q What companies had approached you?

9 A IBM.

10 Q Well, you already referred to IBM.

11 A This is another IBM branch.

12 Q Oh, it is another, separate IBM contract?

13 A Yes, sir..

14 Q Explain the circumstances surrounding that contract.

15 A We had a two-year contract with them. Our contracts
16 with them are in two-year segments. We have had
17 contracts with them for 15 years. They indicated to us
18 that they would not be able to keep their minimum
19 agreement, minimum requirement or commitment, I should
20 say.

21 Q Excuse me. When you say minimum requirement in their
22 agreement, they agreed to use the airplane so many hours
23 a year, is that it?

24 A Yes. The last contract, or contract in effect at that
25 time was for approximately 1100 hour a year minimum.

1 They normally flew about 1800 hours a year, so they
2 well exceeded the minimum. At this time, it was about
3 the middle of 1974, they told me that they would not be
4 able to maintain the minimum, and what they would like
5 us to do without any penalties to them, is to extend
6 the term of the contract so that they would not be
7 left with a penalty. I think their contract expired
8 in August of 1974, and they asked us to extend it to
9 December 31st, 1974.

10 Q Was there a reduction in the amount of service being
11 requested by IBM under this contract after that?

12 A There was obviously some reduction because of the
13 extension in time.

14 Q In other words, you are saying that the minimum was
15 locked into a certain period of time and by extending
16 that period of time, it watered down the profits to the
17 company?

18 A Yes.

19 Q Were there any other factors you took into account at the
20 time of this conference with Bell?

21 A Also, as time progressed, we were because the contract
22 with IBM was expiring on or about August 31st of '74,
23 that we were told that, we started negotiations, I
24 should say, on a new contract to replace the old
25 contract at its expiration date.

1 Q The contract with whom?

2 A IBM. IBM is our largest customer. And the contract
3 that they were proposing was a reduction of approxi-
4 mately 55 percent of the previous committed minimum, so
5 that instead of 1100 hours per year minimum flying time,
6 they were agreeing to 500 hours of minimum flying time.

7 Q And you are now referring to still another IBM contract?

8 A This is another IBM contract.

9 Q Were there any other factors taken into account?

10 A Yes, we had other customers who were relatively
11 important to us. That is, significant in the amount of
12 flying they did, and these were construction contractors.

13 Q Would you identify the names of those companies, if you
14 can?

15 A Yes, one of the largest in the area is Nesselick
16 Construction Company. There was a company associated
17 with them that did a lot of flying called Brooks, and
18 such as that, they indicated to me that the construction
19 business was severely hit and they expected a steep
20 slide in their business which actually came about.

21 Q How would you know about this? Do they arrange for this
22 charter service in advance or did they simply pick up
23 the phone and ask for a flight in an airplane?

24 A Normally they called and scheduled the flight.

25 Q So you are familiar with the principals in these companies

1 and you have conversations with them regarding their
2 needs for the future?

3 A Yes, usually I frequently am the captain of the airplane
4 which they fly, and most of these people don't require
5 copilots, so I prefer to fly the flight. There are no
6 copilots, and so I fly with them and we visit, and I
7 accompany them on their business, come back and we visit
8 again on the return flight.

9 Q And did the amount of the service provided by Commuter
10 or the charter service decrease in the fall of '74 to
11 these companies?

12 A I would say so, yes.

13 Q All right. Were there any other companies who had
14 spoken to you regarding the needs for your charter
15 services?

16 A I would say that those were essentially --

17 Q Were there any other economic or any other factors you
18 took into consideration?

19 A We had one more economic factor which was, I felt, very
20 significant, and that is, we have a season like most
21 industries do, and our season starts in September where
22 we reach, start up to a peak and then drop off again
23 by December, and from December --

24 Q In other words, you begin to climb in September and
25 drop --

1 A Drop by the time we get to December.

2 Q Is the peak reached at September?

3 A No, it starts in September. Normally our summer months
4 are relatively quiet. Most of our customers are on
5 vacation.

6 Q I see. So the point of the climb starts in September '74?

7 A Yes.

8 Q Then it peaks up in December '74?

9 A No, it drops back again to the low in December.

10 Q I see.

11 THE COURT: So essentially, your season
12 is the fall, is that it?

13 THE WITNESS: Yes, sir.

14 BY MR. RICHARDS:

15 Q Any other times of the year?

16 A And then, of course, it normally picks up again in
17 March. Now, it doesn't mean that normally business is
18 bad. We expect it. We average out on this.

19 Q All right. Any other factors?

20 A Well, of course, we missed out on the jet program and
21 that was rather important.

22 Q Now, at the time you talked with Ted Bell, what were
23 your instructions to him regarding your staffing
24 requirement for the future?

25 A Well, I told him that we would have to cut our staff

1 back and I gave him the reasons. Now, Ted is not
2 familiar with our economic development in the company.
3 He does an excellent job of handling the pilots and
4 handling the FAA as it applies to the flight department.
5 But it's pretty much all-consuming. He does not get
6 into any part of the economic picture because he has
7 been with us, I would estimate, about 17 years and has
8 not learned much about that part of our operation.

9 Q All right. But specifically, what did you say to him
10 regarding the cutback in your staff situation?

11 A I told him that I had made the decision that we were
12 going to cut back. That is, the expansion that we had
13 gone to is going to be reversed and that we were going
14 to start with the flight department and I want to cut
15 back because that is where the largest expansion was
16 done.

17 Q Was this a cutback to take place throughout the company,
18 including other departments?

19 A Well, I didn't discuss the cutback with Ted Bell, but
20 yes, it was.

21 Q Well, at the time you talked with Ted, was this true?

22 A The decision was to cut back in all departments.

23 Q Did you indicate to Ted --

24 A All departments that were necessary to cut back.

25 Q Did you indicate to Ted as to the number of pilots to

1 be cut back at that time?

2 A Yes, I indicated that I did not want to cut --
3 basically, I did not want to cut any captains. I want
4 to keep the captains intact, we would cut the copilots'
5 staff.

6 Q Why did you want to keep your captains intact?

7 A Captains are difficult to find as to the quality we need.
8 Just because a fellow has five thousand hours, doesn't
9 mean he knows how to fly for our operations, and they
10 are hard to find. It takes a lot of cost on our part
11 to teach them, and even after they have gone through
12 our training and transition program, we still have to
13 watch them to see if they are compatible with our
14 operation. So once we find these fellows, they are like
15 gems, we don't want to lose them.

16 Q And you earlier indicated you were going to cut back
17 two copilots?

18 A No, we had decided that we were going to cut back in
19 our copilot program, and my evaluation was that we would
20 cut back to approximately seven copilots.

21 Q Seven copilots?

22 A Yes.

23 Q Was there any particular time period in which these
24 copilots were to be discharged?

25 A No, there was no particular time period.

1 I wanted it done as soon as possible. I meet a lot
2 of resistance from my supervisors in cutting back --

3 THE COURT: How many does that mean
4 that you discharged?

5 THE WITNESS: It would mean half of
6 them.

7 THE COURT: So you would be discharging
8 seven?

9 THE WITNESS: Well, we expected to
10 cut back seven, yes. We found in the interim period
11 that we didn't need to cut back seven because there
12 was a natural attrition, there were resignations,
13 other jobs.

14 THE COURT: We will take our luncheon
15 recess.

16 (Luncheon recess was taken.)

17 (Trial resumes.)

18 THE COURT: All right, proceed.

19 MR. RICHARDS: With your permission,
20 your Honor, we would like to interrupt with this
21 witness and call another, William Ferber.

22 THE COURT: All right.

23 (Whereupon, the direct examination of
24 Jerry Winston was interrupted and the following
25 witness was called:)

1 WILLIAM F. FERBER,
2 having been called as a witness in behalf of Defendant
3 Winston, was first duly sworn according to law and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. RICHARDS:

7 Q Mr. Ferber, where do you reside?

8 A Sterling Park in Virginia.

9 Q What is your profession?

10 A Corporate pilot.

11 Q Incidentally, how long have you been flying?

12 A Since 1952.

13 Q Now, were you at one point employed by Commuter Airlines?

14 A I was.

15 Q And during what period of time?

16 A I started with them in 1969 through '74, October of '74.

17 Q All right. Now, when you left Commuter Airlines in
18 October '74, where did you go to work?

19 A AFM Corporation in Westfield, Massachusetts.

20 Q And what were the circumstances surrounding this new
21 employment?

22 A We had a contract with IBM --

23 Q Commuter had a contract?

24 A Yes, Commuter had a contract with IBM. They went out
25 on bids for new aircraft in October and AFM Corporation

- 1 out of Westfield, Massachusetts obtained the contract.
- 2 Q And were there any conditions in that contract regarding
- 3 your flying the airplane?
- 4 A Well, they requested they keep the same crew if at
- 5 all possible.
- 6 Q And the crew was yours, and what other pilot?
- 7 A Jim McKinly, my copilot.
- 8 Q Now, were you aware of union activity in the fall of '74
- 9 at Commuter?
- 10 A Yes.
- 11 Q There has been some testimony regarding the captains'
- 12 meeting at which Mr. Winston and Mr. Bell addressed the
- 13 group on October 5th, 1974. Do you recall ever attend-
- 14 ing that meeting?
- 15 A No, I did not attend it.
- 16 Q Between that time and the time you left Commuter, did
- 17 you have conversations with Winston regarding union
- 18 activity?
- 19 A Only that we used to go up there on our flights. I
- 20 would always talk to Mr. Winston, and I believe when
- 21 the union was going on, I had received a ballot card.
- 22 On one of my flights up there, I gave it to him.
- 23 Q You say when you got your ballot card, your ballot,
- 24 you gave it to Mr. Winston?
- 25 A Yes, that's right.

1 Q And had he asked you to come into the office at that
2 time?

3 A Yes, he did. He always did, whenever I went up there.

4 Q Did he ask you for the ballot?

5 A No, he didn't.

6 Q You gave it to him voluntarily?

7 A I did.

8 Q Was that the only contact you had with either Winston
9 or Bell regarding union matters at Commuter at that time?

10 A At that time it was, yes.

11 Q Do you know about when you left Commuter, was it in the
12 beginning or the end of October?

13 A I believe it was the first week in October, when I called
14 Mr. Winston up and gave him my notice that I was leaving.

15 Q But you continued working for Commuter up until what
16 time?

17 A The end of October. I started with the new company the
18 1st of November.

19 Q Okay. Now, during the time you were with Commuter,
20 did Mr. Bell ever give you any check rides?

21 A During the period that I was with them?

22 Q Yes.

23 A Oh, yes, every six months.

24 Q And would you briefly explain the procedure he followed
25 when he gave you these check rides.

1 A He had a regular format he went by, and he would just
2 go through each item during the flight check which was
3 a requirement by the FAA.

4 Q Are you ever required to give check rides to other
5 pilots?

6 A No, not at the present time, no.

7 Q Did you, back then?

8 A Pardon me?

9 Q Did you, back then, give any check rides?

10 A No, just standardization they used me for. Not on the
11 six-month check, but every once in a while when I was
12 in Binghamton, they did use me for flight checks which
13 were different than the six-month check that Mr. Bell
14 gave.

15 CROSS-EXAMINATION

16 BY MR. SHANAHAN:

17 Q Mr. Ferber, there were I believe two meetings at the
18 home of Mr. Kleitz, a pilot who worked for Commuter
19 Airlines back in the summer of 1974.

20 Let me ask you, did you attend any
21 meeting at his residence?

22 A I attended one meeting, yes.

23 Q And do you recall when that meeting was that you
24 attended?

25 A I would say it was probably the month of September, the

1 exact date I don't recall, no.

2 Q And do you recall who was present at the meeting that
3 you did attend?

4 A I believe all the captains were, except for Mr. Reeve,
5 he was on vacation at the time.

6 Q I see. All of the captains who were at that time in the
7 employ of Commuter were present except for Mr. Reeve,
8 as you recall it?

9 A I believe so, yes, sir.

10 Q And at the meeting that you attended, did Mr. Lamos
11 take over the function of secretary and keep notes?

12 A He was taking notes, yes.

13 Q And was there a general discussion at that time about
14 working conditions in a general way, dispatching
15 procedures and so on?

16 A Yes, there was.

17 Q And following that meeting, did you review or have an
18 opportunity to review the minutes that were compiled
19 under the procedure at that meeting by Mr. Lamos?

20 A I believe it was the next day Mr. Bell gave me a
21 copy of the subjects that were brought up.

22 Q And you did have then an opportunity to review it?

23 A Yes, I did.

24 Q Now, there has been some testimony here, Mr. Ferber,
25 that there was a second meeting at a later date at Mr.

1 Kleitz's residence. I take it from what you said you
2 did not attend that meeting?

3 A I did not.

4 Q And during the months of September and October of '74,
5 you were working for Commuter Airlines, that is correct,
6 is it not?

7 A Through October, yes, sir.

8 Q And were you on some type of detached service at that
9 time?

10 A I was, yes, Washington.

11 Q And where were you stationed?

12 A At Dulles Airport.

13 Q Near Washington?

14 A Yes, sir.

15 Q And were you at that time flying a Commuter Airlines
16 plane?

17 A I was.

18 Q And that plane was being utilized on charter?

19 A It was.

20 Q By IBM, would that be so?

21 A Yes.

22 Q Now, in the course of your work, did you have occasion
23 from time to time to return to the Binghamton or
24 Broome County Airport?

25 A I did.

1 Q And on those occasions, you would see Mr. Winston and
2 Mr. Bell, presumably?

3 A I did.

4 Q And other pilots and copilots who worked for the
5 company?

6 A I did.

7 Q Well, first of all, let me ask you, you have indicated
8 that you did receive a ballot from the National
9 Mediation Board to vote on whether you wanted to be
10 represented by this union or not, would that be correct?

11 A I did.

12 Q Did I understand your testimony that that ballot you
13 turned over to Mr. Winston?

14 A I did.

15 Q And you have indicated to us that that was not as
16 a result of any solicitation on his part?

17 A None at all.

18 Q And when you turned it over to Mr. Winston, did you
19 realize that that amounted to voting against the union?

20 A I sure did.

21 Q And was that your choice?

22 A It was.

23 Q That was the vote you desired to register, would that
24 be right?

25 A Definitely, it was.

1 Q All right. Now, you have indicated that Mr. Bell,
2 throughout your employment with Commuter, would
3 administer periodically, every six months, check rides
4 to you?

5 A Yes, sir.

6 Q Did you at any time, in connection with this union
7 activity, hear any talk indicating that he had
8 threatened to make check rides tough for any one?

9 A I did not.

10 Q Any talk of that nature at all?

11 A None whatsoever.

12 Q Your employment with Commuter terminated on November 1st,
13 would that be correct?

14 A Yes.

15 Q Did there come a time when you received a second ballot
16 from the National Mediation Board?

17 A I really don't recall. I recall vaguely there being
18 a second ballot mentioned, but I don't recall whether
19 I received one or not.

20 Q Well, by whom was it mentioned?

21 A On one of the trips up to Binghamton, some of the
22 pilots said there had been some second ballots sent
23 out in case anyone had returned any in, wanted to
24 change their minds and vote, but I don't recall
25 specifically having received one.

1 Q I see. But the only recollection that you have on the
2 subject of ballots was receiving one, turning that in to
3 Mr. Winston?

4 A Yes.

5 Q And whether or not you received a second one, you don't
6 recall?

7 A I don't recall.

8 Q But if you did receive it, did you do anything with
9 one, do you have any recollection of doing --

10 A I am sure I threw it in the ashcan.

11 Q I beg your pardon?

12 A I am sure I threw it away.

13 MR. SHANAHAN: I think that's all.

14 CROSS-EXAMINATION

15 BY MR. CHALENSKI:

16 Q Mr. Ferber, you are flying for AFM Corporation now?

17 A That's right.

18 Q Under contract to IBM?

19 A That's right.

20 Q What kind of a plane are you flying?

21 A Citation.

22 Q Is that a prop, jet?

23 A Jet aircraft.

24 Q Now, AFM won a bid to provide that airplane?

25 A They did.

1 Q Did Commuter bid on it?

2 A They did.

3 Q And is it fair to say Commuter lost that bid?

4 A They did, yes.

5 Q And the plane to be provided under that contract was
6 a jet plane, is that correct?

7 A It was, or it is, yes.

8 Q When were the bids opened?

9 A Pardon me?

10 Q Do you know when the bids were opened?

11 A I would say probably the latter part of September or the
12 first week -- latter part or running into the first
13 week of October because it was the first week in
14 October when I was notified, and I think it was right
15 during that period, it was probably, the bids were
16 probably opened and the decision was made.

17 Q Do you recall how far before you were notified that
18 the bids were opened?

19 A I would say within a day.

20 Q So you were notified during the first week of October
21 that would mean, unless you were notified on October 1st
22 that the bids were opened sometime during --

23 A The first week of October.

24 Q October. Now, at that time both you and your copilot
25 left the employ of Commuter Airlines and went to

1 AFM Corporation and continued providing basically the
2 same flying services you had prior to that for IBM, is
3 that correct?

4 A Yes, sir.

5 Q So as far as you were concerned, there was no change
6 except who was giving you the paychecks?

7 A Correct, and the different aircraft, yes.

8 Q Now, at the time that you gave your ballot to the
9 Defendant Winston, you knew that you were leaving the
10 company, is that correct?

11 A True.

12 Q You knew that you would never have any occasion to be
13 in the union, is that correct?

14 A Correct.

15 MR. CHALENSKI: Thank you, Mr. Ferber.

16 MR. RICHARDS: No questions.

17 THE COURT: You are excused.

18 (Witness excused.)

19 MR. RICHARDS: The defendants call
20 James McKinly.

21

22

23

24

25

1 JAMES A. McKINL ,
2 having been called as a witness in behalf of Defendant
3 Winston, was first duly sworn according to law and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. RICHARDS:

7 Q Mr. McKinly, what is your address?

8 A 10126 Loman Drive, Manassas, Virginia.

9 Q What is your profession?

10 A I am a pilot.

11 Q And how long have you been a pilot?

12 A Five and a half years.

13 Q Mr. McKinly, back in 1974 were you employed by
14 Commuter Airlines?

15 A Yes, I was.

16 Q Do you recall the approximate date of your employment
17 by Commuter?

18 A I believe it was in March 1972.

19 Q Do you recall when you left Commuter?

20 A The last day of October in '74.

21 Q Okay. Now, do you have any recollection of a meeting
22 of the copilots in October of '73 regarding salary
23 schedules at which the management was present?

24 A I heard that there was such a meeting, but I did not
25 attend.

1 Q All right. Did you subsequently learn what was discussed
2 at that meeting?

3 A Yes, I did.

4 Q And what did you learn?

5 A That they were --

6 MR. CHALENSKI: Your Honor, objection,
7 hearsay.

8 THE COURT: Could I have the question?
9 (Pending question read.)

10 THE COURT: Sustained.

11 BY MR. RICHARDS:

12 Q Mr. McKinly, do you know what the company policy was
13 regarding ATR requirements?

14 A As discussed at that meeting?

15 Q Or as you understood it to be.

16 A Okay. I was taken aside --

17 MR. CHALENSKI: Objection, your Honor.

18 THE COURT: Sustained.

19 BY MR. RICHARDS:

20 Q Do you understand what the ATR requirements were of
21 Commuter at the time you were employed by them?

22 A Yes, sir.

23 Q And what were those requirements?

24 A That you needed an ATR in order to become a captain.

25 Q Was there any limitation period in which a copilot

1 should get the ATR?

2 A Three years.

3 Q Now, there has been testimony regarding a copilots'
4 meeting at which Mr. Winston and Mr. Bell spoke to the
5 group. Were you in attendance at that meeting?

6 A No, sir.

7 Q Did you learn in September or October of '74 that the
8 Teamsters were organizing a union at Commuter; is that
9 correct?

10 A Yes, sir, I did.

11 Q Did there come a time when you received a ballot to vote
12 in the forthcoming election?

13 A Yes, I did.

14 Q What did you do with that ballot?

15 A I gave it to Mr. Winston.

16 Q Now, Mr. Winston asked you into the office?

17 A No, sir, he did not.

18 Q Had you gone into the office voluntarily?

19 A Yes, I did.

20 Q And what did Mr. Winston say to you when you went into
21 the office?

22 A He asked me why I came in and I told him I had received
23 a ballot in the mail and that I was going to give it to
24 him.

25 Q And you what?

1 A I was going to give it to him because I had no
2 intention of mailing it in. I didn't want the union to
3 come in.

4 Q Okay. Did there come a time when you received a second
5 ballot?

6 A Yes, I did.

7 Q What did you do with that second ballot?

8 A I threw that one in the trash.

9 Q You, incidentally, did not attend any of the union
10 meetings, did you?

11 A No, sir, I did not.

12 Q Now, you are flying with Bill Ferber, isn't that correct?

13 A Yes, sir.

14 Q And you are part of that team servicing IBM charters?

15 A In Washington, yes, sir.

16 Q And you are employed by AFM Corporation?

17 A Yes, sir.

18 Q And your employment terminated with Commuter about the
19 last week of October?

20 A Yes, sir, it was the last day of October.

21 MR. RICHARDS: Thank you.

22 CROSS-EXAMINATION

23 BY MR. SHANAHAN:

24 Q Mr. McKinly, you were, for the latter part of your
25 employment with Commuter, working out of the Dulles

1 Airport field in Washington?

2 A Yes, sir.

3 Q And how long a period of time was it that you were
4 located there?

5 A I was hired there and I worked there the whole time I
6 worked for Mr. Winston, two and a half years.

7 Q I see. Now, in connection with your work, did you have
8 occasion from time to time to get to the Commuter
9 offices and the Broome County Airport, from time to time?

10 A Oh, yes, sir.

11 Q And was that with some frequency?

12 A It was irregular, but I would say on an average of three
13 or four times a month.

14 Q Three or four times a month. Now, do you recall being
15 informed concerning an agreement that was arrived at
16 between the copilots and the management of the company
17 back in October of 1973?

18 A Yes, sir.

19 Q And did you attend, personally, any meeting or meetings
20 that led to that agreement?

21 A I attended a meeting with Mr. Bell.

22 Q I beg your pardon?

23 A I did not attend a meeting with the group of copilots,
24 but I attended a meeting with Mr. Bell.

25 Q On the subject of whatever this agreement was that was

1 arrived at in October of '73?

2 A Yes, sir.

3 Q And then will you tell us what that agreement -- first
4 of all, let me ask you, did Mr. Bell at that time
5 advise you as to the subject matters that had been
6 brought up by the copilots at that meeting?

7 A Yes, he did, he outlined it for me.

8 Q Did he ask you whether or not you approved of the
9 proposals that had been made?

10 A Yes, he did.

11 Q And did he tell you what those proposals were?

12 A Yes, sir.

13 Q And will you tell us what talk you had with him on that
14 subject?

15 A Basically, the majority of the conversation I had with
16 Mr. Bell was concerning the revamping of the pay system
17 for the copilots.

18 Q That's what I'm talking about.

19 A Yes, sir, which was a three-year system. At the end of
20 three years, it was understood that a copilot would be
21 qualified to be a captain, and if he was not qualified
22 to be a captain, then there wasn't really anyplace for
23 him in the company.

24 Q Then what?

25 A Then they would relieve him of his job.

1 Q They would relieve him of his job, okay. Now, and was
2 that an arrangement that you as a copilot agreed to back
3 at that time?

4 A Yes, I did.

5 Q And was that thereafter the policy of the company?

6 A Yes, it was.

7 MR. SHANAHAN: I think that's all.

8 CROSS-EXAMINATION

9 BY MR. CHALENSKI:

10 Q Mr. McKinly, you said that thereafter that was the
11 policy of the company. Did you ever see that in
12 writing anyplace?

13 A I believe there was a policy letter written and sent
14 to all the copilots, yes, sir, I did.

15 Q You believe you saw a policy letter written?

16 A Yes, sir.

17 Q Was anybody else present at that conversation you had
18 with Mr. Bell?

19 A There may have been, but not that I recall.

20 Q Were any of the copilots present?

21 A No, sir.

22 Q Now, at that time, how long had you been with the
23 company?

24 A A little over a year, about a year and a half.

25 Q You were hired what date?

1 A March of '72.

2 Q Do you have your ATR now?

3 A No, sir, I do not.

4 Q Did you have a conversation with Hugh McDougald during
5 or about the first week of October?

6 A I would run into him from time to time in that period
7 when I came up here, yes, sir.

8 Q Do you recall McDougald telling you that since you were
9 leaving you should vote for the union since it would not
10 make any difference to you?

11 A No, sir.

12 Q Do you recall speaking with an agent of the Federal
13 Bureau of Investigation, a Mr. Larry Leane, on
14 January 16th, 1975?

15 A Yes, sir, I do.

16 Q Do you recall telling Mr. Leane that Hugh McDougald
17 contacted you around the first week of October?

18 A Is that the question?

19 Q Yes.

20 A Yes, sir.

21 Q Do you recall telling him that at that time you found
22 out that the pilots had already had a couple of meetings
23 and were advising you that they requested the union to
24 come in?

25 A Yes, sir.

1 Q Do you recall telling him that you were not in favor
2 of the union at that time and did not appreciate being
3 contacted at that late date?

4 A Yes, sir, I did.

5 Q And that you did not have anything to say -- strike that.

6 MR. SHANAHAN: Did not what?

7 MR. CHALENSKI: Strike that last
8 question.

9 Q So you were contacted by McDougald, or at least you told
10 the FBI agent that, and you told the FBI agent you
11 didn't appreciate this contact?

12 A Wasn't necessarily a contact. I happened to see the man
13 up there and he told me -- brought me up to date of what
14 would happen concerning the union meetings and everything
15 and I told him that I really didn't approve of the union
16 and I didn't approve of the way that I was contacted.
17 I was never really, formally contacted by any of the
18 copilots asking for my participation in the union.

19 Q Now, what did McDougald contact you about?

20 A He never really contacted me, I just happened to run
21 into him at the airport and we got into a conversation.

22 Q What did you say to him and what did he say to you?

23 A I can't recall.

24 MR. RICHARDS: Objection, hearsay.

25 THE COURT: No, we have had McDougald

1 on here. Go ahead.

2 BY MR. CHALENSKI:

3 Q What did McDougald say to you and what did you respond
4 back to him?

5 A About the only clear thing that I can remember in that
6 conversation that McDougald had with me was that he
7 told me he had been threatened by a number of the copilots
8 because at this point in time he was in disfavor with
9 the union and that he was very -- I know at that time he
10 seemed very upset over what had happened, and I believe
11 he said something to the effect that, well, it shouldn't
12 really concern you because you are leaving anyway.
13 That's just about all I recall.

14 THE COURT: When did you decide to leave?

15 THE WITNESS: Excuse me?

16 THE COURT: When had you made the
17 decision to leave?

18 THE WITNESS: The 1st of October.

19 THE COURT: This conversation with
20 McDougald, was that after the 1st of October?

21 THE WITNESS: Yes, sir.

22 THE COURT: When did you apply for this
23 new job that you took?

24 THE WITNESS: I gave Mr. Winston my
25 resignation on the 1st of October.

1 THE COURT: That's not what I asked you.
2 I asked you when you applied for the
3 new job with AMF.

4 THE WITNESS: AMF called Mr. Ferber
5 and asked Mr. Ferber if he would like to come aboard
6 with their company on the new airplane.

7 THE COURT: When?

8 THE WITNESS: Must have been the last
9 of September. It was just before the 1st of October.

10 THE COURT: And when were you contacted
11 to go along?

12 THE WITNESS: Mr. Ferber contacted me
13 after that and asked me if I wanted to go with him.

14 THE COURT: When after that?

15 THE WITNESS: Oh, maybe a day or two
16 after that.

17 THE COURT: So when in September?

18 THE WITNESS: The 30th, 31st of
19 September. I'm not exactly sure.

20 THE COURT: And did you make any
21 written application?

22 THE WITNESS: No, sir.

23 THE COURT: Where did you work prior
24 to working with Commuter?

25 THE WITNESS: I worked at the airport

1 at Gaithersburg, Maryland.

2 THE COURT: As a pilot or copilot?

3 THE WITNESS: No, sir.

4 THE COURT: Had you work-d anywhere
5 else as a copilot?

6 THE WITNESS: No, sir.

7 THE COURT: Other than Commuter?

8 THE WITNESS: Before Commuter?

9 THE COURT: Yes.

10 THE WITNESS: No, sir.

11 THE COURT: How long have you lived
12 in Manassas?

13 THE WITNESS: I moved to Manassas
14 in April of 1972. I have always lived in the Washington,
15 Virginia area.

16 THE COURT: I suppose you wanted to
17 continue working in that area?

18 THE WITNESS: That was not the reason
19 for me --

20 THE COURT: But you wanted to continue
21 working there, I suppose?

22 THE WITNESS: Yes, sir.

23 THE COURT: Did you have a home in
24 Manassas?

25 THE WITNESS: Yes, sir.

1 THE COURT: Family there?

2 THE WITNESS: Yes, sir.

3 THE COURT: Children in school there?

4 THE WITNESS: Not yet.

5 THE COURT: What references did you
6 give when you were asked to take this job with AFM?

7 THE WITNESS: Just my two and a half
8 years with Commuter Airlines.

9 THE COURT: Did they ask for any other
10 recommendations, any other references?

11 THE WITNESS: I have no idea what
12 they asked for. They asked me who the man was that
13 I flew with. Of course, he was the one that contacted
14 me and AFM contacted him.

15 THE COURT: So that you had given
16 Commuter as a reference in connection with your new
17 job, is that right?

18 THE WITNESS: Yes, sir.

19 THE COURT: All right.

20 BY MR. CHALENSKI:

21 Q Mr. McKinly, about how long after you were offered the
22 opportunity to fly for AMF did you advise Mr. Winston
23 that you were quitting?

24 A It was within a matter of days, one or two days.

25 Q So you first found out about the offer from AMF a

1 couple days or so before you told --

2 A AFM.

3 Q AFM, I'm sorry, okay. And how long prior to the time
4 that you -- strike that.

5 Mr. Ferber told you about the offer to
6 him, is that how it happened?

7 A Yes, sir.

8 Q And when had the offer been made to Mr. Ferber?

9 A I would imagine it was around the 30th of September. It
10 was just before he contacted me.

11 Everything happened within a matter of
12 two or three days.

13 Q When you say just before he contacted you, do you mean
14 a couple days within, a couple days before he contacted
15 you?

16 A No, he contacted me the same day that he was contacted.

17 Q Okay. So within then about two days after Mr. Ferber
18 was contacted, you got in touch with Mr. Winston, told
19 him you were quitting?

20 A Yes, sir.

21 Q And do you recall telling an FBI agent, the same agent,
22 Larry Leane, that you and Ferber made a telephone call
23 during the middle of October to Jerry Winston and
24 advised him you both were resigning from Commuter
25 Airlines?

1 A I believe I told him it was arranged the 1st of October
2 that we did that, yes, sir.

3 Q Well, when they say in the report here the middle of
4 October, that is not correct?

5 A It wasn't the middle of October. We gave Mr. Winston a
6 month's notice, so it would have been around the 1st of
7 October.

8 Q Did you also tell him that you believed it was on
9 October 24th, 1974, that you personally advised Winston
10 that you were going to be resigning when you saw him
11 in Binghamton, New York?

12 A It was about that time, yes, sir.

13 Q So that was three or so weeks after you called him up on
14 the phone?

15 A Yes, sir.

16 Q Now, did Defendant Winston ask you any questions
17 concerning your ballot?

18 A No, sir.

19 Q He didn't ask you for it?

20 A No, sir.

21 Q Do you recall telling the FBI that you were present when
22 Mr. Ferber gave his ballot to Defendant Winston and
23 Defendant Winston said to Mr. Ferber, I really appreciate
24 your bringing this up to me?

25 A No, sir.

1 Q You don't recall telling the FBI agent that?

2 A No, sir.

3 Q Do you deny that you told him that?

4 A Yes, sir.

5 Q Do you recall telling the FBI agent that you believed
6 that Winston asked you at that time if you had your
7 ballot with you?

8 MR. SHANAHAN: Asked him what?

9 (Pending question read.)

10 A He might have, I don't recollect it.

11 Q You may have said that?

12 A I may have, but I don't recollect it.

13 Q That you responded, no, it's at home, might you have
14 said that?

15 A I can't recall.

16 Q Do you deny that you said it?

17 A I can't remember that I said it.

18 Q Is the answer, you don't deny that you said that?

19 MR. SHANAHAN: I think his answer was
20 he didn't remember. I suppose if somebody can't
21 remember something, they can't very well deny it.

22 THE COURT: Well, sometimes people
23 don't remember what they don't want to remember.
24 Go ahead. Do you deny it?
25

1 BY MR. CHALENSKI:

2 Q Do you recall telling the FBI agent that you asked
3 Winston if he would like to have it and that Winston
4 replied, if you are not going to mail it in, I would
5 appreciate having it?

6 A Are you asking me if I deny that?

7 Q No, I'm asking you if you recall saying it.

8 A No, sir, I do not recall that at all.

9 Q Do you deny having said it?

10 A Yes, sir, I do.

11 Q Do you recall telling the FBI agent that you did not see
12 any harm in this inasmuch as you did not feel that you
13 would be eligible to vote?

14 A I remember telling the FBI agent that I gave my ballot
15 to Mr. Winston because of that reason, but that's it.

16 Q Do you recall telling the FBI agent that you also asked
17 Winston at that time about your two weeks vacation as
18 to whether or not you would be able to receive any monies
19 for it?

20 A This is all supposed to have happened at the same time?

21 Q I am asking you whether you told this to the FBI agent,
22 Mr. Leane.

23 A I remember talking to Mr. Winston about whether or not I
24 would get my two weeks vacation pay.

25 THE COURT: What did he say?

1 THE WITNESS: He said I would.

2 BY MR. CHALENSKI:

3 Q Now, with reference to Mr. McDougald, do you recall
4 telling the FBI agent that McDougald mentioned to you
5 that since you were leaving, you should vote for the
6 union since it would not make any difference to you?

7 A Not in that context, no, sir, I did not say that.

8 Q Do you deny having said that to the FBI agent?

9 A In that context, yes, sir.

10 Q Do you deny having said those words to the FBI agent?

11 A I am not quite sure I understand what you mean by that.

12 Q You said something about context. I am not concerned
13 about the context, just what words you told the FBI
14 agent.

15 A I may have said to the FBI agent in passing, that while
16 Mr. McDougald and I were talking, that he told me that,
17 well, it doesn't really matter to you because you are
18 leaving anyway.

19 Q Do you deny that you told the FBI agent that McDougald
20 told you you should vote for the union since it would not
21 make any difference?

22 A I don't remember McDougald ever telling me that I should
23 vote for the union.

24 THE COURT: Is that what you told the
25 FBI agent? Did you tell him that or didn't you?

1 THE WITNESS: All these are -- I
2 don't remember.

3 THE COURT: Did you talk to the FBI
4 agent about this matter?

5 THE WITNESS: Yes, sir, I did.

6 THE COURT: Did you tell him that?

7 THE WITNESS: Not exactly in those
8 words, no.

9 THE COURT: What did you tell him?

10 THE WITNESS: I told the FBI agent
11 about a conversation that I had with Mr. McDougald
12 in the airport terminal building.

13 THE COURT: To what effect?

14 THE WITNESS: As I recall, it started
15 out with --

16 THE COURT: Did you tell him it didn't
17 make any difference to you, or something to that effect,
18 whether you cast your ballot for or against the union?

19 MR. SHANAHAN: Pardon me, your Honor.
20 I don't think that was the question that counsel is
21 asking.

22 THE COURT: I know it isn't.
23 Did you tell him anything of that nature?

24 THE WITNESS: No, sir.

25 THE COURT: Not a thing of that nature?

1 THE WITNESS: He already knew that
2 I wasn't going to vote for the union.

3 MR. CHALENSKI: That's all the
4 questions I have.

5 REDIRECT EXAMINATION

6 BY MR. RICHARDS:

7 Q Did you sign a statement for the FBI, Mr. McKinly?

8 A No, sir.

9 MR. RICHARDS: No further questions.

10 THE COURT: Incidentally, is there a
11 union at AFM?

12 THE WITNESS: No, sir, there is not.

13 RECROSS-EXAMINATION

14 BY MR. SHANAHAN:

15 Q Mr. McKinly, I am not exactly clear myself. Perhaps the
16 jury is not. Your work for Commuter for some time before
17 you left Commuter, was this charter work for IBM, would
18 that be so?

19 A Yes, sir.

20 Q And what did that consist of, flying IBM officials from
21 place to place?

22 A Yes, sir, it did.

23 Q And when this other company successfully bid against
24 Commuter, your employment changed from Commuter to the
25 new company, would that be right?

- 1 A Yes, sir, it did.
- 2 Q And you are still doing the same type of flying, that is
- 3 you are flying for IBM officially?
- 4 A Yes, sir, same people.
- 5 Q And was it your understanding that the IBM people
- 6 requested that you and Mr. Ferber continue to fly for
- 7 them?
- 8 A I can't say that for sure, I don't know.
- 9 Q I see. Well, all right. But did you at any time make
- 10 an application to -- what is the name of this company
- 11 you are presently with?
- 12 A AFM Corporation.
- 13 Q AFM. Did you make any application for a position with
- 14 them?
- 15 A No, sir, I did not.
- 16 Q And you have indicated to us that Mr. Ferber told you
- 17 that he had been requested to work for them?
- 18 A Yes, sir.
- 19 Q And did he also inform you at that same time that you
- 20 were requested likewise to work for them?
- 21 A Yes, sir.
- 22 Q Now, was it necessary that you had some talk, or did you
- 23 have some talk with somebody connected with AFM in
- 24 connection with this employment, this new employment?
- 25 A Mr. Ferber talked to AFM Corporation.

1 Q Did you personally?

2 A No, sir.

3 MR. SHANAHAN: All right, I think
4 that's all.

5 THE COURT: What did it do to your
6 job at Commuter when Commuter lost the IBM run from
7 Washington and Binghamton?

8 THE WITNESS: I don't understand what
9 you mean, sir. You mean the contract they had?

10 THE COURT: Well, that was what you
11 were doing with Commuter, flying a run between
12 Washington and Binghamton?

13 THE WITNESS: No, sir, we were flying
14 an airplane to IBM headquarters in Washington.

15 THE COURT: Yes.

16 THE WITNESS: It wasn't a regular run.

17 THE COURT: It was a commuter plane?

18 THE WITNESS: Yes, sir.

19 THE COURT: And if Commuter lost that
20 business, you would cease to be doing that work unless
21 you got a job with a different company doing different
22 work all the same, right?

23 THE WITNESS: No, no. When they lost
24 the contract, if I hadn't gone with AFM Corporation,
25 I would have gone to Binghamton.

1 THE COURT: You would have had to
2 move to Binghamton?

3 THE WITNESS: Yes, sir.

4 THE COURT: Or quit?

5 THE WITNESS: Yes, sir, but given an
6 option, I would have gone to Binghamton.

7 RECROSS-EXAMINATION

8 BY MR. CHALENSKI:

9 Q Mr. McKinly, you were flying charter work for IBM, is
10 that correct?

11 A Correct.

12 Q It wasn't regularly scheduled flights?

13 A No, sir, they were not.

14 THE COURT: You are excused.

15 (Witness excused.)

16 MR. RICHARDS: We will recall

17 Mr . Winston.

18 JERRY WINSTON,

19 having been previously duly sworn according to law, testified
20 further as follows:

21 DIRECT EXAMINATION (Continuing)

22 BY MR. RICHARDS:

23 Q I believe, Mr. Winston, before we broke for lunch, you
24 were discussing the various steps you took regarding the
25 economic, prevailing economic conditions at the time,

1 one of which you indicated you were going to reduce your
2 copilots' staff from 14 to seven, is that correct?

3 A Correct.

4 Q Were there any other steps you were considering at this
5 time to reduce the cost of the operation?

6 A Yes. We had decided that we would not use our new
7 airplanes, that we would ground them, put them in the
8 back of the hangar and put them up for sale.

9 Q Now, the new airplanes, you mean the Metros?

10 A The two Metros, yes.

11 Q And did you thereupon ground those airplanes?

12 A Effectively.

13 Q Well, when you say effectively, what do you mean by
14 that?

15 A Well, it was my intention to keep them as new as possible,
16 put as little use on them so they would have greater
17 resale value, and however, this was the time when the
18 engine bulletins came out for the Metros, and if you
19 recollect in the tape, I mentioned \$23,000 per engine
20 was necessary. This was the bulletin that had come out
21 requiring a lot of work, grounding of aircraft while
22 this work was going on, and so Mr. Warner apprised me
23 of this problem and I said okay, we will certainly
24 rotate the aircraft we have until you are done with
25 your program.

1 Q So actually, you utilized all four aircraft, but you
2 reduced the number of flights for each aircraft?

3 A Well, the amount of flying time that we put in with two
4 aircraft was no different than it was with four aircraft.

5 Q Okay. Were there any other cutbacks you put into effect
6 at this time?

7 A Yes, we cut our scheduled operations as well.

8 Q And do you have here in court today those schedules in
9 effect at this time?

10 A Yes, I do.

11 Q May I see them, please?

12 A (Handing.)

13 THE CLERK: Defendant's Exhibit X
14 marked for identification.

15 Q Now, Mr. Winston, I show you Defendant's Exhibit X
16 marked for identification and ask you if you can tell us
17 what that is.

18 A These are the schedules that we publish for our
19 passengers, informing the passengers what times our
20 aircraft leave for the various destinations.

21 Q And how many schedules do you have in your hand there?

22 A I have five.

23 Q All right. And for what period of time?

24 A From September 3rd, 1974 to April 29th, 1975.

25 Q Now, would you review those schedules and identify for

1 the Court and jury the points which were discontinued
2 by Commuter over this period of time.

3 A Yes. On November 1st -- I should say on September 3rd,
4 we had two flights into Dulles, flight 400, flight 450.
5 We dropped those on November 1st, 1974.

6 We had another schedule change on
7 January 1st, 1975, in which we added one LaGuardia flight
8 but reduced the Newark-White Plains operation so that
9 instead of using two aircraft, we used one aircraft.
10 We combined the two points, so effectively, we reduced
11 it from two aircraft to one so the net effect in our
12 schedule was zero schedule change.

13 The next schedule change was on April 1st,
14 1975, at which time we dropped one Kennedy flight and
15 decided to combine another Newark and White Plains
16 flight, so effectively, on that schedule change we
17 dropped another two flights.

18 Another schedule change on April 29th,
19 1975 which was effectively just a price change.

20 Q All right. Have you included all of the changes put
21 into effect at that time?

22 A All I can see.

23 Q And are all those changes reflected in this
24 exhibit identified as X?

25 A Yes, they are.

1 Q Now, what other cutbacks did you implement at this time?

2 A No other cutbacks in our schedule. We did implement
3 the personnel cutback.

4 Q You have already mentioned a reduction in a copilot
5 staff from 14 to seven.

6 A Yes.

7 Q Were there any other personnel cutbacks?

8 A Yes, we cut back our line staff. The line staff had
9 been at one point there in this period, the same period,
10 nine. We cut it down to five people.

11 Q Now, Mr. Winston, perhaps I asked you this earlier, but
12 line staff, are those the people responsible for
13 fueling the aircraft?

14 A Fueling the aircraft, moving the airplanes in and out,
15 just giving the general non-mechanical services for
16 our aircraft.

17 Q And they are to be distinguished from those who actually
18 work on the aircraft called the mechanics, is that it?

19 A Yes.

20 Q And you had a reduction from nine to five in the line
21 division?

22 A Yes.

23 Q And do you have any reduction in mechanical division?

24 A Yes, we did. We had reduced our staff in the same
25 period from 16 to 12 mechanics.

1 Q Now, who is in charge of the mechanics and linemen?

2 A Art Warner.

3 Q And did you convey this direction to Warner on or about
4 the same time?

5 A I would say that I talked to him just slightly later.
6 I spoke to Ted Bell first.

7 Q All right. And you gave him instructions as to how he
8 should reduce his staff?

9 A Yes.

10 Q Now, as far as who would be discharged, who would that
11 be left up to?

12 A That was left up to Art Warner.

13 Q Okay. And he had been in a better position to know the
14 qualifications of the men he is discharging?

15 A Yes, I told him that he is to take our least proficient
16 people and --

17 Q Were those the only reductions in personnel you can think
18 of at the time?

19 A Yes.

20 Q Were there any other cutbacks you implemented at this
21 time?

22 A Not that I can think of at this time.

23 Q All right. Now, Mr. Winston, I failed to ask you what
24 your own qualifications are in the aviation field. How
25 are you qualified, sir?

1 A I am a pilot. I have an ATR rating, air transport
2 rating. I have 22,000 hours. I have been a command
3 instructor while I was in the Army Air Corps. I have
4 been a designated commercial examiner for approximately
5 20 years, assigned by the FAA.

6 Q Is that designation through the FAA?

7 A Through the FAA, yes, which means that I can give
8 flight tests for a commercial pilot and give them their
9 actual license. And before Ted Bell became company
10 examiner, I was the company examiner.

11 Q Examiner?

12 A Check pilot.

13 Q Giving check rides?

14 A Yes.

15 Q And you are generally familiar with the procedure used
16 in giving a check ride?

17 A Generally, yes.

18 THE COURT: What is your general
19 education?

20 THE WITNESS: I went to grade school
21 for eight years, high school four years and college.
22 I learned to fly while I was attending college.

23 THE COURT: Where did you go to college,
24 what degree?

25 THE WITNESS: CCNY. I was a pre-med

1 student.

2 MR. RICHARDS: May I proceed?

3 THE COURT: Yes.

4 BY MR. RICHARDS:

5 Q Do you have any other licenses or certifications issued
6 by any agency?

7 A Yes, I have my ground school instructor's rating,
8 flight instructor's rating, driver's license.

9 Q Okay. Thank you. Now, referring back to this conference
10 you had with Theodore Bell, I gather from what you
11 earlier said that you undertook evaluation of all the
12 copilots to determine who would be cut back, is that
13 correct, who would be discharged?

14 A Yes.

15 Q Now, at the time you entered into that conversation
16 with Bell, did you yourself have any opinions as to
17 which copilots would be fired?

18 A Yes, I did.

19 Q And what was your opinion?

20 A Well, there are certain pilots that stood out in my mind,
21 Ronnie Williams, Josephson, and I would say Slough.

22 Q All right. How about Michael Baan?

23 A Well, yes, Baan was new with the company. He had been
24 with the company approximately two weeks at that time
25 and we had no money invested in him as far as training.

1 And I might say, training is extremely expensive.
2 We didn't know whether he would qualify for the company
3 anyway, and since we were doing the cutback, we should
4 also -- I was influenced by the fact that I expected
5 Bill Ferber to come back to Binghamton, so that would be
6 an extra crew --

7 Q Let me ask you this: at the time you had this
8 conversation with Bell, did you know about the transfer
9 of Ferber and McKinly?

10 A Well, I knew that we were not going to get this contract.
11 I knew that our bid was too high. I had talked to Bill
12 Ferber and I asked him if we lose the contract, do you
13 want to come back to Binghamton and he said yes.

14 Q Okay. About when did you learn that Ferber and McKinly
15 were leaving?

16 A Leaving our company?

17 Q Yes.

18 A I would say about the first or second week in October.

19 Q And who talked with you, Ferber or McKinly?

20 A Well, I know Bill Ferber did and I believe that Mr.
21 McKinly did, too.

22 Q Do you know if it was in person or on the telephone?

23 A I can't say.

24 Q Okay. Now, going back to the session which you had
25 with Bell, what was said at this conference, what did

1 you say and what did Bell say?

2 A Well, I indicated to him that I had decided that we were
3 going to do an economic cutback. I was pretty concerned
4 about the economy. I was concerned about our credit
5 position with the banks and I felt the only thing to do
6 was to cut back and I wanted him to sit down with me
7 and do an evaluation of the copilots we had to see which
8 ones we would let go.

9 Now, it doesn't mean that the performance
10 was poor or bad or so. We just had to cut back. We had
11 to take those that were the least value to us.

12 Q All right. In the course of this discussion, did you
13 get into matters of attitude, proficiency of various
14 copilots?

15 A Yes, we did.

16 Q Did you discuss pilots other than Slough, Josephson,
17 Baan?

18 A We discussed them all. That is, we put all the things
19 we could think of, all the things we could dig up and
20 anything to do what we feel a fair evaluation.

21 Q Okay. Presumably, at the end of this session, was some
22 decision made as to those pilots who would be cut back?

23 A The decision at the end of this session was to be the
24 three pilots that we did cut back.

25 Q And those three pilots were Slough, Josephson and Baan?

1 A Yes, sir.

2 Q Now, would you relate to the Court and jury what factors
3 you took into account at the time you selected Slough
4 as being the one to be dismissed?

5 A Yes. Slough was on probation --

6 Q Now, let me stop you right there. Did the company have
7 any policy as to probation?

8 A Yes, we had a one-year probationary period.

9 Q Did that one-year probationary period include all pilots
10 or just copilots?

11 A It was all pilots.

12 Q And who was responsible for interviewing applicants for
13 pilots' jobs?

14 A Ted Bell was responsible for it. Frequently, if I was
15 around, he would send them in to talk with me, just
16 introduce them and talk with me.

17 Q Now, do you know if this probationary policy was in
18 writing?

19 A No, it wasn't.

20 Q But in any event, Bell was under instructions -- how
21 long had that probationary policy been in effect in the
22 company?

23 A It has been in effect ever since we have been in business.

24 Q Okay. And was the interviewer of an applicant
25 instructed to make certain that this person knew there

- 1 was a probationary period?
- 2 A Ted Bell was supposed to do that.
- 3 Q All right. Now, when was Slough hired, according to your
- 4 records?
- 5 A He was hired May 19th, 1974.
- 6 Q And he was discharged on what date?
- 7 A October 3rd, 1974.
- 8 Q His check actually extended to October 6th, is that it?
- 9 A Okay, this is from the records. It's somewhere in that,
- 10 within a few-day period.
- 11 Q Now, in addition to the probation factor, were there any
- 12 other matters you took into consideration when you
- 13 selected Slough?
- 14 A Yes, Ted and I talked about his nonavailability.
- 15 Q Now, Mr. Winston, did you know about his non-
- 16 availability before this conference?
- 17 A Yes.
- 18 Q And had it been reported to you by Bell?
- 19 A Bell, and our scheduling staff.
- 20 Q And your scheduling staff would be your office personnel?
- 21 A It would be the girls that are in charge of dispatching
- 22 aircraft, seeing that the crews report for duty.
- 23 Q Okay. Do you recall what Bell had to say regarding the
- 24 nonavailability of Slough?
- 25 A Well, he said that he had called him on occasions and

1 found he was in Rochester, and of course, in Rochester
2 he wasn't within call, and I feel that this is a
3 violation -- let me tell you, if I may back up.

4 Those that I talked to in the personnel
5 interview upon -- before deciding whether we would hire
6 them, I talked about the history of our company relative
7 to availability and I stressed the importance of
8 availability.

9 Q Let's spend a little time with availability. Exactly
10 what does it mean, Mr. Winston?

11 A What does it mean? It means that if a schedule change
12 becomes necessary, then if we call them, we would like
13 to be able to get in touch with them within a reasonable
14 period.

15 Q Do I understand that every weekend one or two pilots
16 would be assigned duty, to be on call, is that correct?

17 A Yes, that's another problem. That is a different area.

18 Q I see. Well, what area are we talking about?

19 A I was talking about the Monday through Friday availability.

20 Q You mean late arrival for flights or just being on call
21 Monday through Friday?

22 A Being on call Monday through Friday. On weekends, we
23 would assign a crew who are on the availability list
24 because we had a relatively light schedule. On weekends
25 at that time, I believe we either had one scheduled

1 flight a day or two.

2 Q All right. And in Slough's case, you are talking about
3 this week availability issue?

4 A During the week.

5 Q All right. What else was considered in Slough's
6 selection?

7 A Okay. Slough, lateness was discussed and --

8 Q Now, when you say lateness, are you talking about
9 lateness for flights?

10 A Yes, lateness for reporting on scheduled operations.

11 Q Now, what is the company rule regarding reporting for
12 flights?

13 A They are supposed to report an hour before flight time.

14 Q And is this rule in writing?

15 A Yes.

16 Q All right. And are you indicating in your testimony
17 that there were occasions when Slough did not report
18 on time for flights?

19 A Yes, this is what we discussed.

20 Q Now, incidentally, have you had an opportunity before
21 testifying here today to review your records, and have
22 you found any memos or notes indicating specific dates
23 in which Slough was late for his flight?

24 A Yes.

25 Q May I see what you have?

1 A This is a report from --

2 Q No, I am not talking about that, I am talking about
3 late arrival for flights, Mr. Winston. Do you have any
4 notes or memoranda supporting that?

5 A Nothing other than that.

6 Q Okay. Now, do you know, for example, how many instances
7 in which Slough was late was reported to you by Bell?

8 A No.

9 Q Okay. Were there any other factors you took into
10 account?

11 A Yes. I felt that he was disinterested in his job.

12 Q Who felt he was disinterested in his job?

13 A The personnel with whom he worked reported to me that
14 they felt he was disinterested in his job.

15 Q Can you identify those persons who talked with you
16 regarding --

17 A Office staff and my son, Mark, who worked every summer
18 with me.

19 Q Okay. What else was taken into account?

20 A His sloppy paperwork. The comment I have is atrocious.

21 Q What paperwork duties does a copilot have with the
22 company?

23 A He has quite a bit of paperwork. Since he does the
24 ticketing of passengers, he writes the tickets. He has
25 to take care of manifests. That is when passengers get

1 on board, we have to keep a record of who is on board
2 and what ticket was used for that. There is a report
3 that the copilot is responsible for which goes to the
4 office for accounting purposes, and pretty bad.

5 Q Now, Mr. Winston, Commuter doesn't have any airline
6 hostesses, does it?

7 A No, we do not.

8 Q And as a matter of fact, you don't have any special
9 personnel or personnel hired for the sole purpose of
10 selling tickets or taking money for tickets, do you?

11 A Well, as we grow, we gradually are phasing out of the
12 copilots responsibility in this area.

13 Q But at this time, who is responsible for tickets?

14 A At this time, essentially, the copilot is responsible.

15 Q Okay. Would there be occasions when other personnel
16 would undertake this responsibility of the company?

17 A Well, sometimes we would send our girls over, but
18 essentially, it is the copilot's responsibility.
19 The rule is, if there is a problem, it is the copilot's
20 responsibility. He is responsible for the overall
21 picture.

22 Q Now, referring to Slough, what was there in his
23 performance which did not satisfy you regarding his
24 paperwork?

25 A Well, I brought an example, or I have an example here

1 in the file where this is a report to the office dated
2 1/1/74. Mr. Slough was not employed by the company
3 1/1/74, he was employed much later than that.

4 Q What do you have in your hand?

5 A Okay. This is an office report showing the amount of
6 money collected and the tickets are inside the envelope.

7 THE CLERK: Defendant's Exhibit Y
8 marked for identification.

9 Q Now, Mr. Winston, showing you Defendant's Exhibit Y
10 consisting of an envelope with a ticket, I would ask you
11 if you can identify that for us, please.

12 A Yes, this is the envelope which the copilot turns in,
13 we require it. It is a system that we have in our
14 company for a copilot to turn in, showing the date of
15 this report, the flight number that it covers, the
16 captain, the copilot, the amount of money that is in
17 his envelope and the matching tickets.

18 Q Now, how do you know that was Slough's responsibility?

19 A It is written, copilot, Slough.

20 Q All right. Now, what is there about that document
21 which, in your opinion, indicates sloppy paperwork on
22 his part?

23 A Well, the date is wrong.

24 Q What is the date on that document?

25 A January 1st, '74.

1 Q And when was he hired?

2 A He was hired May 19th, 1974.

3 Q Anything else about that ticket which disturbs you
4 regarding paperwork?

5 A There are three cash tickets indicated and the money
6 that was in the envelope was for two.

7 Q So that --

8 MR. CHALENSKI: Excuse me. Might I
9 have the last part of that answer?

10 THE WITNESS: And the money that is
11 in the envelope is for two.

12 THE COURT: We will take a short recess,
13 to get a little cool air.

14 (Recess taken.)

15 (Trial continues.)

16 THE COURT: All right, proceed.

17 MR. SHANAHAN: If the Court please,
18 at this time we do have another witness available here,
19 and with your permission, may we interrupt this
20 witness again?

21 THE COURT: Sure.

22 (At this time the direct examination
23 of Defendant Winston was interrupted.)
24
25

1 LAWRENCE W. FISH, JR.,
2 having been called as a witness on behalf of the defendants,
3 was duly sworn according to law and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SHANAHAN:

6 Q Mr. Fish, where do you reside, please?

7 A R.D. 4, Binghamton, New York.

8 Q And what is your employment or your work?

9 A I am chief electronics engineer at McIntosh Laboratories.

10 Q Would you tell us what McIntosh Laboratories is, please?

11 A It is a manufacturer of stereo and high fidelity
12 equipment.

13 Q Does that include recording devices, tapes, upon which
14 recordings are --

15 A We are in the process of developing a tape recorder
16 now, sir.

17 Q And you are the chief electronics engineer for that
18 concern?

19 A That's correct.

20 Q And what is your educational background, Mr. Fish?

21 A My bachelor of science degree is from Mass. Maritime
22 Academy in marine engineering, and electrical engineering
23 from Tuft's University.

24 Q And did you, at an earlier occasion, have an opportunity
25 to inspect an exhibit in this case, a cassette tape

1 that has been marked here Exhibit 24 in evidence?

2 A Yes, sir, I did.

3 Q And can you tell us when or approximately when you had
4 an opportunity to see that exhibit before, Mr. Fish?

5 A On Monday, approximately two weeks ago.

6 Q That would have been at the United States District
7 Court clerk's office in Albany?

8 A It was at the FBI office in Albany.

9 Q In the FBI office in Albany. Was that exhibit made
10 available to you at that time?

11 A Yes, it was.

12 Q And did you examine it?

13 A Yes, I did.

14 Q And did you have some equipment with you that you used
15 in connection with that particular tape?

16 A Yes, we did have equipment with us. The purpose was to
17 make a copy of this tape.

18 Q Would you tell us briefly what type of equipment you
19 had with you?

20 A I had two stereo cassette recorders and one monophonic
21 portable recorder.

22 Q And did you at that time, with the use of the
23 instruments that you brought with you, make copies of
24 that exhibit?

25 A Yes, I did, by employing one more instrument, we ran it

1 through a noise filter to filter out some of the
2 background noise so that the tape would be more
3 intelligible.

4 Q And as a result of what was done at that time, you ended
5 up with one or more copies of that exhibit, would that
6 be so?

7 A That's correct.

8 Q And then did you later have time to study the copies
9 that you made?

10 A Yes, this morning, in fact.

11 Q I beg your pardon?

12 A This morning, in fact.

13 Q Now, first of all, are there stereo recorders, is there
14 such a thing as that?

15 A Yes, there is, sir.

16 Q And there is also what is known as a monophonic recorder?

17 A Yes. The primary difference being the stereo recorder
18 has two channels of information; the monophonic has a
19 single channel of information.

20 Q And is that also true of tapes that are stereo type
21 tapes and monophonic type tapes?

22 A Referring to this cassette type of tape, there is only
23 one type of tape that can be used on either machine as
24 for a recording medium, and that is just strictly a
25 cassette tape.

1 Q I see. Now, will you tell us what your examination of
2 that exhibit disclosed to you, Mr. Fish, please?

3 A Well, this original tape was made on a stereophonic
4 machine up to the point of the telephone conversations,
5 at the end of the tape. They become a single channel
6 and contain only single channel information. They are
7 monophonic.

8 Q So that if I understand you correctly, what you are
9 telling us is that the tape, the exhibit that you hold
10 in your hand, was recorded on a stereophonic tape
11 recording device, would that be right?

12 A Yes, sir.

13 Q Now, the small type of recording device such as a person
14 could carry on their person, what type of a recording
15 device is that?

16 A That only has one channel of electronics, one microphone
17 Therefore, it is a monophonic recorder.

18 Q It is a monophonic recorder?

19 A Yes.

20 Q And what you are telling us, if I understand you
21 correctly, is that that exhibit was not made on a
22 monophonic recorder?

23 A Yes, sir.

24 Q And what you are saying to us is that it was made
25 instead on a stereophonic?

1 A Yes, that is my opinion.

2 Q Now, what enables you to tell us that, upon what do
3 you base that?

4 A We have an instrument called the maximum performance
5 indicator that is in fact an oscilloscope. To this
6 oscilloscope we apply the information from one channel
7 to the vertical plates and the information from the
8 other channel to the horizontal plates. If in fact the
9 material is monophonic, the presentation on the face of
10 the oscilloscope will be a 45-degree line that will vary
11 with the sound level of the tape, the actual output from
12 a tape recorder, the length will vary at a 45 angle of
13 degree. If the information is stereophonic, it will
14 have differences in phase and frequency. Therefore, the
15 pattern will no longer be a straight line, but will
16 become some sort of an ellipse.

17 Q Now, in connection with your examination with that type
18 of equipment, what did you find here?

19 A I found that the first part of the tape, namely Mr.
20 Winston's speech, was recorded on, at least this copy
21 was recorded on a stereophonic machine. The telephone
22 conversations were recorded on a monophonic machine.

23 Q Now, the jury, at an earlier time in the case, Mr. Fish,
24 had an opportunity to hear that tape played. Do you
25 recall toward the end of Mr. Winston's remarks that there

1 was what appeared on the tape to be some type of
2 interference?

3 A Yes.

4 Q Could you tell us what that was?

5 A Yes, this interference is telephone calls made by a
6 Mr. Calder, I believe the name is, to wives of some
7 gentlemen, I don't remember the names right offhand.

8 Coincident with the end of the speech,
9 this interference was on the right channel and consisted
10 of telephone conversations made backwards.

11 Q And have you, by means of some other type of equipment,
12 been able to reverse those so that you could understand
13 them?

14 A Yes, this morning I copied the right channel only of
15 that area of the tape. The interference only appears on
16 the right channel.

17 Q I see.

18 A And on a reversible recorder, and I played that machine
19 in reverse and it was in fact the same telephone
20 conversations that appear on the right channel at the
21 end of the tape.

22 Q Now, were you able to arrive at a conclusion as to what
23 type of a recording device was used in connection with
24 the portions of the telephone calls that appear on the
25 tape?

1 A The telephone calls were made on a monophonic machine,
2 single channel.

3 Q So that this exhibit in part was made on a stereophonic
4 machine and the other part was made on a monophonic
5 machine; would that be right?

6 A That's correct.

7 Q And it is your testimony, so that we understand it, that
8 the portion of Mr. Winston's conversation then was made
9 on a stereophonic machine?

10 A Yes, sir.

11 Q Is there any doubt in your mind about that?

12 A No, there is no doubt.

13 Q Let me ask you this: if the conversation was originally
14 recorded on a monophonic instrument such as I have
15 described, the type a person would carry about or have
16 in their pocket, and it is now on a stereophonic,
17 recorded by a stereophonic device, as you tell it, it
18 means, does it not, that that exhibit is necessarily
19 a copy rather than an original?

20 A Yes, sir.

21 Q Is that it?

22 A Yes.

23 MR. SHANAHAN: I think that's all.
24
25

1 CROSS-EXAMINATION

2 BY MR. CHALENSKI:

3 Q You did not test the original tape, is that correct?

4 A No, sir.

5 Q You tested your copy?

6 A Yes, sir.

7 Q And how did you make your copy?

8 A On a regular cassette tape recorder.

9 Q You used what they call a patch cord?

10 A Yes, sir.

11 THE COURT: Did you use a stereo or
12 monophonic tape?

13 THE WITNESS: I used a stereophonic.

14 THE COURT: Wouldn't you get a
15 stereophonic cassette?

16 THE WITNESS: I beg your pardon?

17 THE COURT: Automatically, you would
18 get a stereophonic cassette, wouldn't you, if you
19 copy a monophonic tape with a stereophonic recorder?
20 Don't you wind up with a stereophonic tape?

21 THE WITNESS: No, sir.

22 The information to the two channels is from a
23 monophonic source and is identical to both sources,
24 both channels. The definition of stereo is that
25 there is --

1 THE COURT: Two channels?

2 THE WITNESS: The difference between
3 two channels, either phase, frequency or amplitude

4 THE COURT: Doesn't it also --
5 wouldn't the second channel pick up from a monophonic
6 tape?

7 THE WITNESS: No, it wouldn't, sir.

8 THE COURT: It wouldn't pick up the
9 high or low pitches or differences in amplitude

10 THE WITNESS: There is a possibility
11 of some leakage between the two channels, yes, but
12 a monophonic recorder is made on a quarter track.
13 In other words, one quarter of this tape, for the
14 very reason that it would be compatible with a
15 stereophonic machine, if it were a half track,
16 the left and right channels appear at alternates.
17 In other words, say working from top to bottom you
18 would have a left channel, then a right channel,
19 reverse direction, left channel, right channel, sorry,
20 forward direction, then the left channel reverse
21 direction. Now, if it were a half track machine
22 that recorded across these two stereo channels,
23 the complete conversation would be unintelligible
24 because part of it would be backwards.

25 THE COURT: Just so I understand you,

1 if I speak into a microphone that is hooked up to
2 a stereophonic set, do I record one or two channels?

3 THE WITNESS: One channel, sir.

4 THE COURT: Only one?

5 THE WITNESS: If you have a mono
6 stereo switch on the front of the recorder, you can
7 switch this to record both channels.

8 THE COURT: If I have got it on
9 stereo recording, doesn't it pick up two?

10 THE WITNESS: Then you must have two
11 microphones to have stereo.

12 THE COURT: All right.

13 BY MR. CHALENSKI:

14 Q Mr. Fish, did you bring two machines to Albany?

15 A Yes, I did, sir, I brought three machines.

16 Q You played the tape on one of your machines and copied
17 it on another?

18 A Yes, sir.

19 Q And now in a cassette machine such as the kind that a
20 person would have in a home, is there a replaceable
21 head?

22 A Yes, there is.

23 Q Is that what you determine, that in fact the tape
24 recorder had a stereo head?

25 A The tape recorder that this tape was made on?

1 Q Yes.

2 A Yes, it does have different information on both channels

3 Q Well --

4 A It is the same speech but there are phase differences,
5 and amplitude differences.

6 Q That is not what I am asking. Did you determine whether
7 the recorder on which that tape was made was a stereo
8 tape recorder or merely had a stereo head?

9 A It merely had a stereo head.

10 Q And was recording on one channel at the time?

11 A Yes, sir.

12 Q Can an oral tape recorder be wired so that stereo head
13 would record only on one channel?

14 A Yes, sir.

15 MR. CHANELSKI: No further questions.

16 MR. SHANAHAN: I have nothing further.

17 THE COURT: You are excused.

18 (Witness excused.)

19 JERRY WINSTON,

20 defendant, having been previously sworn according to law,
21 testified further as follows:

22 THE COURT: Mr. Winston, did you listen
23 to this tape that was played the other day?

24 THE WITNESS: Yes, I did.

25 THE COURT: Is it an accurate recording

1 of what you said or isn't it?

2 THE WITNESS: It sounds like it is
3 accurate of what I said, but not complete.

4 THE COURT: You mean by that it has
5 been testified here you said something before the
6 tape picked you up or something after, or something
7 to that effect?

8 THE WITNESS: After.

9 THE COURT: After.

10 DIRECT EXAMINATION (Continuing)

11 BY MR. RICHARDS:

12 Q Mr. Winston, I believe we were discussing the dismissal
13 of Robert Slough, and I believe you indicated you were
14 identifying the factors you took into account.

15 If my recollection serves me, you had
16 handed me Defendant's Exhibit Y which you have identified
17 as a ticket having been made out by Slough sometime in
18 October '74, is that correct?

19 A Made out October 1st, 1974.

20 Q But as a matter of fact, what is the actual date
21 appearing upon that document?

22 A January 1st, 1974.

23 Q And it was your earlier testimony that the office
24 noticed when they reviewed that document that there was
25 some cash or money missing?

1 A Yes. When this sealed envelope was opened, the tickets
2 were taken out and the tickets are these tickets here.
3 This is the ticket we sell to a passenger. What you see,
4 the blue ticket on top, is the auditor's coupon. There
5 were three of these which indicated cash sales.
6 They were each \$60 per ticket. There were three tickets
7 in the envelope and cash for only two.

8 Q All right. Now, when was this brought to your attention?

9 A It was brought to our attention, I would say, a day or
10 two later.

11 Q Well, this was brought to your attention before the
12 conversation with Bell or after the conversation with
13 Bell?

14 A After it.

15 Q After it. So as a matter of fact, that ticket business
16 didn't enter into your conversation with Bell, did it?

17 A No.

18 Q Were there any other factors which you took into account
19 with Slough?

20 A Yes, we talked about, in addition to the sloppy paperwork,
21 his careless habits. We had reports that he left the
22 counter unlocked, which meant our cash was unsecured.
23 He would leave the counter unattended with the cash box
24 on top of the counter. He would report for duty and
25 forget to bring his keys so he couldn't unlock the cash

1 drawer which contained the cash and tickets to be sold.

2 THE COURT: Is there any memoranda
3 in the files made contemporaneous with any of these
4 events?

5 THE WITNESS: Yes.

6 THE COURT: Where are they?

7 THE WITNESS: This is the letter I
8 spoke about. That is a report made to me the summer
9 of -- around August of 1974.

10 MR. RICHARDS: Let's mark this, shall we?

11 THE COURT: That is a year earlier?

12 THE WITNESS: No, a few months earlier.

13 THE COURT: A few months earlier.

14 THE CLERK: Defendant's Exhibit Z
15 marked for identification.

16 BY MR. RICHARDS:

17 Q Mr. Winston, showing you Defendant's Exhibit Z, is this
18 the memo you referred to when you spoke with the Judge?

19 A Yes.

20 Q Now, as a matter of fact, that memo isn't dated though,
21 is it?

22 A No, it is not dated. I have a note on here that it was
23 given to me in the summer of '74.

24 Q But was that, if you know, that memo made contempor-
25 aneously with the time the incident happened?

1 A Yes.

2 Q Now, were these other incidents you mentioned --

3 THE COURT: Who made the memo?

4 THE WITNESS: My son did.

5 THE COURT: Are you able to fix the
6 time better than the summer of --

7 THE WITNESS: I would say about August.

8 THE COURT: About August what?

9 THE WITNESS: 1974.

10 THE COURT: Yes. August has 31 days.

11 THE WITNESS: That is the best I can do.

12 THE COURT: Sometime in August?

13 THE WITNESS: Yes.

14 THE COURT: All right. Is it the
15 practice not to date these memos?

16 THE WITNESS: No, it is not the practice,
17 but we run an operation on a family basis. We don't
18 particularly record every incident that occurs.
19 Most incidents are inconsequential. That is, somebody
20 has a problem that doesn't mean he is going to get the
21 guillotine. It is just an incident and we tell him,
22 hey, cut it out.

23 THE COURT: What do you do, accumulate
24 them?

25 THE WITNESS: No, we don't accumulate

1 them. We normally don't make notes with these things.
2 We are too busy.

3 THE COURT: All right.

4 BY MR. RICHARDS:

5 Q Is there any reason why you made a memo of this incident?

6 A Yes. When it was reported to me I would say, hey,
7 give me a note of this thing, I will throw it in my file.
8 I have a general file that I dump things into.

9 Q All right. Were there any other factors you took into
10 account at the time of this decision?

11 A In this pilots' meeting of October 1973, I was
12 particularly unhappy with the housekeeping habits of
13 our copilots. They were, in addition to other things,
14 responsible to keep their airplanes tidy.

15 Q Now, this is the meeting of the copilots and management
16 in October of '73 when they discussed salary schedules?

17 A Yes.

18 Q And at which time there was a discussion regarding ATR
19 requirements ?

20 A Yes.

21 And you are indicating to us that at this time you were
22 discussing with these copilots certain housekeeping
23 chores?

24 A Yes.

25 Q And would you explain to us what you were discussing at

1 that time with the pilots?

2 A I told them that our aircraft assigned to Washington for
3 IBM --

4 MR. CHALENSKI: I object unless they
5 show a communication with Mr. Slough.

6 THE WITNESS: He attended the meeting.

7 MR. CHALENSKI: This is October of '73.

8 THE COURT: Sustained.

9 BY MR. RICHARDS:

10 Q Now, were there any administrative duties which the
11 copilots had to perform in their capacity as copilots?

12 A Well, yes, they have FAA records that they are required
13 to keep.

14 Q But more specifically, were there any requirements
15 regarding aircraft?

16 A Yes. I indicated that they have to write tickets for
17 passengers, collect the cash, report it in the
18 envelopes I demonstrated --

19 Q No, I'm talking about the aircraft itself with any
20 duties a copilot had.

21 A Yes, they are required to keep the aircraft tidy.

22 Q All right. Did you have any information regarding
23 Slough's performance of this duty regarding the
24 keeping of an aircraft clean?

25 A Yes.

1 Q And what was reported to you?

2 A The airplanes were -- well, I will go a step further
3 than that. I personally saw the condition of the
4 airplanes.

5 Q Do you recall when this was?

6 A Yes, for the period prior to this, October '73 meeting --

7 MR. CHALENSKI: Excuse me, I couldn't
8 hear that answer.

9 A I said I saw the condition of the aircraft prior to the
10 October 1973 meeting.

11 Q No, Mr. Winston --

12 MR. CHALENSKI: I move that be stricken.

13 BY MR. RICHARDS:

14 Q We are talking about Robert Slough employed in May '74.

15 A Yes.

16 Q Now, is it your testimony that you knew of an instance,
17 you personally saw an instance in which Slough failed
18 to keep his aircraft neat and clean and picked up?

19 A I think what I would like to say then is that I am
20 personally aware that this was a problem. I can't say
21 that I personally saw Slough.

22 Q Were there any reports given to you regarding Mr. Slough's
23 performance of this duty, keeping the aircraft clean?

24 A Yes.

25 Q Was this considered by you and Bell at the time of this

1 conversation?

2 A Yes.

3 MR. CHALENSKI: May the date and
4 times of these reports be set?

5 THE COURT: Could you fix a time?

6 MR. RICHARDS: Yes, your Honor.

7 Q Do you have any recollection as to the times these
8 reports were given to you?

9 A No.

10 THE COURT: We will recess now until
11 Monday morning at 10 o'clock.

12 Don't talk about the case. Don't
13 let anybody talk about it with you.

14 (Whereupon, the proceedings were
15 adjourned.)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA, :
Plaintiff :
-against- : CRIMINAL NO.
75-CR-83
JERRY WINSTON, BROOME COUNTY :
AVIATION, INC., COMMUTER AIRLINES, :
INC., and THEODORE (TED) BELL, :
Defendants :
-----X

CONTINUATION OF PROCEEDINGS in
above-entitled matter, came on before the United
States District Court, Northern District of New
York, at Auburn, New York, on June 14, 1976, at
10:00 a.m., before the Honorable Lloyd F. MacMahon,
United States District Judge.

VOLUME X

A P P E A R A N C E S:

The Honorable JAMES M. SULLIVAN, JR.,
United States Attorney, Northern District of New York,
Federal Building, Syracuse, New York, by ARTHUR A.
CHALENSKI, ESQ., Assistant United States Attorney,
Of Counsel.

- and -

BECKER, CARD, LEVY & RICHARDS, P.C.,
141 Washington Avenue, Endicott, New York 13760,
Attorneys for Defendants Jerry Winston, Broome
County Aviation, Inc., and Commuter Airlines, Inc.,
by RODNEY A. RICHARDS, ESQ., Of Counsel.

- and -

PAUL R. SHANAHAN, ESQ., Syracuse,
New York, Attorney for Defendant Theodore (Ted)
Bell.

1 (Whereupon, the following proceedings
2 took place before the Court.)

3 THE COURT: Are you able to give me
4 any better estimate about when we will finish this
5 case?

6 MR. RICHARDS: We should finish our
7 proof today.

8 THE COURT: Do you mean this morning,
9 or this afternoon?

10 MR. RICHARDS: This afternoon.

11 THE COURT: What about it? Will the
12 Government have any rebuttal?

13 MR. CHALENSKI: If I do, it will depend
14 on the testimony today, and it will be very short, in
15 any event, I would think; half an hour.

16 THE COURT: Are you planning on going
17 to the Jury then, Tuesday with summations and my
18 charge? I have another case, and I just want to know
19 when to get the jury back. We will have to call in
20 fifty people, and I would like to be able to get an
21 accurate prediction without losing a whole day of
22 trial time.

23 MR. CHALENSKI: My cross examination
24 of Mr. Winston may be fairly lengthy. I don't know
25 if the Defendant has taken this into account when he

1 said we will finish today.

2 MR. RICHARDS: No, that is only the
3 direct.

4 THE COURT: It will take all day on
5 direct?

6 MR. RICHARDS: Into this afternoon,
7 Your Honor.

8 THE COURT: I think we will have to wait
9 until the end of the day. It looks like Thursday
10 morning to me. What do you think?

11 MR. SHANAHAN: I think so. I have the
12 next case, Your Honor, as you know.

13 THE COURT: Yes, that is a factor in my
14 problem here. I don't want to call on fifty people
15 and then tell them to turn around and go home.

16 MR. SHANAHAN: I think Thursday is safer.

17 THE COURT: I guess that will take the
18 pressure off of everyone here, and perhaps you might
19 sum up Wednesday, and I will charge the jury on
20 Thursday morning.

21 Let's try that schedule and see how it
22 goes.

23 MR. CHALENSKI: Your Honor, I have one
24 request. The document identified on Friday, Defendant's
25 Exhibit Z, a memo to Jerry Winston from Mark Winston

1 concerning Mark Winston's comments about the employee
2 Robert Slough, and a recommendation that he be discharged:
3 this was not produced pursuant to any subpoena at any
4 time.

5 THE COURT: I am not with you.

6 MR. CHALENSKI: A document was marked
7 for identification by the Defendant on Friday. It is
8 a letter from Mark Winston to Jerry Winston and it is
9 an undated letter made in August of 1974. The letter
10 is a recommendation by Mark Winston that Robert Slough
11 be terminated, and it contains reasons supporting Mark
12 Winston's recommendation. This letter was not produced
13 pursuant to any subpoena. The Defendant Winston said
14 that he had it in his office in some private file.

15 It is my position that this is covered
16 by the subpoena, and the subpoena was to the corporations,
17 and the corporate records, and that if there is anything
18 similar to this it should be produced as expeditiously
19 as possible.

20 THE COURT: There isn't any question that
21 it should have been produced. There is no question
22 at all.

23 MR. RICHARDS: To the best of my knowledge,
24 there aren't any other memos. I did not know this one
25 was in the file. I am surprised. There is nothing

1 of that nature.

2 THE COURT: All we can do is accept what
3 Counsel says. I assume that he has been through his
4 files, but maybe that is not a safe assumption.

5 MR. CHALENSKI: Yes, Your Honor.

6 THE COURT: Bring in the Jury.

7 (Whereupon, the following took place
8 before the Court and the Jury.)

9 THE COURT: Good Morning, and we will
10 proceed.

11 J E R R Y W I N S T O N

12 Called as a Witness, being previously duly sworn,
13 was further examined and testified as follows:

14 DIRECT EXAMINATION (Continuing)

15 BY MR. RICHARDS:

16 Q Friday afternoon, Mr. Winston, you were discussing the
17 various reasons leading up to the discharge of Robert
18 Slough. Did we cover all of those reasons?

19 A No, we did not cover all of the reasons.

20 Q And would you continue to identify those reasons which
21 lead to his discharge?

22 A In our evaluation, we discussed the Elmira incident.

23 Q And is that the incident that Mr. Bell testified about
24 the ten passengers?

25 A Yes.

1 Q And was that considered by you in this?

2 A Yes, it was.

3 Q And were there any other reasons?

4 A I think that we have covered everything.

5 Q Now, you didn't talk with Mr. Slough at the time of
6 the discharge, is that correct?

7 A That is correct.

8 Q Now, at this meeting with Mr. Bell, did you evaluate
9 Ira Josephson?

10 A We did.

11 Q And would you discuss with the Court and the Jury the
12 reasons and the factors that you took into account
13 leading up to his discharge? First, let me ask you this,
14 Mr. Winston: did you have an opinion as to the
15 proficiency and ability of this pilot?

16 A Yes, I did.

17 Q And what was that opinion?

18 MR. CHALENSKI: I object as to the
19 proficiency, unless he qualifies that further.

20 THE WITNESS: I have flown with co-pilot --

21 THE COURT: (Interrupting) Yes, I
22 sustain the objection.

23 BY MR. RICHARDS:

24 Q Mr. Winston, you are also a line pilot?

25 A Yes, sir.

1 Q And were there occasions when Josephson would fly with
2 you as a co-pilot?

3 A Yes.

4 Q And of course, in flying with you, you were able to
5 elaborate his efficiency as a co-pilot?

6 A Yes.

7 Q And also were you the recipient of reports from other
8 pilots concerning his proficiency?

9 A Yes.

10 Q And would you give us your opinion as to his proficiency?

11 MR. CHALENSKI: I object to the
12 discussion of the qualifications on that.

13 THE COURT: Overruled.

14 BY MR. RICHARDS:

15 Q You may answer?

16 A I feel that his proficiency was generally below average,
17 that he was a mechanical type pilot.

18 Q Did you have any other opinions regarding his ability
19 as a co-pilot?

20 A Well, I felt that he found it difficult to differentiate
21 between his duties as a co-pilot and that of the captain.

22 Q Now, did Mr. Josephson, in your opinion, show any other
23 talent as far as the business?

24 A Yes, when he came into our operation, I thought that he
25 was extremely intelligent, had a lot of talent outside

1 of flying, and he was well-educated, and I felt that
2 with his aviation background that he could be quite
3 an asset to the company in an administrative position.

4 Q All right. Now, what factors were considered by you
5 and Mr. Bell at the time that you decided to discharge
6 him?

7 A Okay. Of course, the prime reason was the economic
8 cut back, and I had frequent reports that he was
9 disliked by captains. Also that captains preferred not
10 to have him assigned to them as a co-pilot, that he had
11 been unfair to other co-pilots in switching duty days.
12 He would not reciprocate. He would ask them to have a
13 weekend off, when he was assigned to a duty day, and
14 when they, in turn, asked him to do the same for them,
15 he refused or had some reason why he couldn't. And
16 this -- also, I was very aware of a situation when we
17 opened our operations in Elmira in September of 1974,
18 because he was a single person, that we felt that we
19 would disrupt our personnel to a minimum if we would
20 transfer Josephson to Elmira. But the report was that
21 it was a new operation, and required a lot of cooperation,
22 a lot of interest, and on the part of everybody involved,
23 and the captains that were assigned to the Elmira
24 operation, Captain Reeve, Captain Solberg and Captain
25 Lamos, recommended that he not be assigned to the Elmira

1 Operation.

2 Q Did you have a specific talk to these three pilots, or
3 was this reported back to you?

4 A It was reported back to me.

5 Q By whom?

6 A By Ted Bell.

7 Q And any other factors considered by you?

8 A A lot of problems with non-availability. On the part
9 of his non-availability, it was as a result of his
10 automobile malfunctions, and especially when he was in
11 New York City, on weekends.

12 Q Now, excuse me, but we were talking about unavailability,
13 and are you talking about the responsibility of a pilot
14 to be on call every so often on a weekend?

15 A He would have an assigned day. We tried to share the
16 weekend duties among the pilots so that they would have
17 as many weekends off without being required to be on
18 call. He would call in and say, from New York City,
19 say, 'My car broke down,' or something to that effect,
20 and , 'Can you get somebody to cover my weekend duty?'
21 You had no choice. His car broke down.

22 Q Why is it necessary to keep a pilot or pilots on call
23 on weekends?

24 A Our weekends are normally light, and the only flights
25 we have on weekends are a morning flight to Washington,

1 and an evening flight to Washington. But there were
2 instances where a charter would be called in, and you had
3 to have somebody available just in case. Now, it doesn't
4 mean that they have to be at the office. They could be
5 out playing golf or tennis or shopping, as long as we
6 could get to them in a reasonable period.

7 Q All right. Were there any other factors that you took
8 into consideration?

9 A Yes. He was on a flight with me when I was Captain of,
10 oh, a flight to Boston. I had as my passenger, the
11 Vice-President of I.B.M., and on the return trip, I had
12 a problem getting one engine started --

13 Q (Interrupting) Could you give us the approximate time
14 that this occurred?

15 A I would estimate that it was about the summer of 1974.

16 Q Okay.

17 A And if you have a problem with an engine starting, it is --
18 you have to analyze why it won't start. You either have
19 too much fuel, not enough fuel, or you are just not
20 preparing it right. The throttle is in the wrong
21 position and should you keep the mixture lean, and there
22 are a lot of things to do to analyze your problem, and
23 get the engine started, and generally you just go
24 through a sequence of perhaps it has got too much fuel,
25 and you lean it out and starve the engine for fuel, and

1 when you do that it will get to the right point for a
2 mixture, and it will start, at which int you can
3 proceed. I attempted this, and I found that Josepnsen
4 was all over the controls. I just couldn't analyze the
5 problem because he was -- he was trying to act as a
6 Captain.

7 Q You mean he was pulling switches?

8 A Yes, that is right. He was all over the place like an
9 octopus, and I did not want to reprimand him, because
10 I had my passenger who was watching the operation and
11 the cockpit is completely visible to him and our
12 conversation is completely audible to him and I did not
13 want to make a bad impression as an uncoordinated team.
14 And so I suffered with the thing and I finally, after
15 perhaps fifteen or twenty minutes, got the engine
16 started, and we took off and we on our way back from
17 Boston to Binghamton and I then had my conversation with
18 co-pilot Josephson and I told him that I could see why
19 he had so many complaints from the Captains about him,
20 simply that he forgets his position that he is co-pilot,
21 and not Captain.

22 Q And what did he say in response to that remark?

23 A He didn't say much.

24 Q Were there any other factors which you took into
25 account?

1 A The Newark incident. On this Newark incident, the
2 aircraft had flown on a scheduled flight from Binghamton
3 to Newark, and with passengers, and apparently they
4 encountered severe weather conditions.

5 Q And the pilot was Jan Solberg?

6 A Yes, and the co-pilot was Josephson, and --

7 Q (Interrupting) Well, go ahead?

8 A They encountered severe weather conditions, but severe
9 weather conditions are a normal occurrence with us.
10 We have to be able to cope with that. Our aircraft
11 is supposed to be equipped, and the pilots are supposed
12 to be experienced to handle that, and it is the type
13 of weather that if the pilot is professional it should
14 not bother him at all.

15 Q Who is responsible for making the decisions as to whether
16 the aircraft will fly or not?

17 A The Captain is ; the Captain. He is responsible.

18 Q This incident was reported to you by whom?

19 A By Ted Bell.

20 Q Was there anything else which you and Ted Bell discussed
21 at this occasion concerning Josephson?

22 A We discussed the weekend duty roster which Josephson
23 changed without permission. We had complaints from other
24 co-pilots who said that they understood that Ted Bell
25 made the changes, and of course, we said no, we had no

1 knowledge of those changes, and we found, upon investi-
2 gation, that it was Josephson who, without authority,
3 made these changes.

4 Q At this session, did Mr. Bell have any opinion as to
5 whether Josephson should stay or leave?

6 A Yes.

7 Q And what was that?

8 A My recollection was that -- that is, Ted Bell, he talked
9 to me about a minimum of eight times at which he asked
10 me to dismiss Josephson, and each time I spoke to
11 Josephson, and I told him that Ted Bell had asked me to
12 discharge him, and that I -- that I was a little reluc-
13 tant to discharge him.

14 Q Mr. Winston, earlier in Josephson's employment with
15 Commuter, did you have plans for him ?

16 A Yes.

17 Q And what were those plans?

18 A Well, I wanted him to move into the operation into an
19 administrative position, because of his education, his
20 talent and intelligence and his background in aviation.

21 Q Did Josephson have any administrative duties as well as
22 the aviation duties?

23 A Yes, he did.

24 Q And what were those duties?

25 A Basically, there were two administrative duties: one was

1 each co-pilot was assigned a duty to keep up ceratin
2 essential and vital manuals. His job was to keep up
3 the Air Canada approach flight book.

4 Q And what is the Air Canada approach book?

5 A The Air Canada approach book are the charts that pilots
6 use in making landings in Canada under the most
7 severest weather conditions. It tells you what is a
8 safe, decent altitude, and what are the proper frequencies
9 to use, and what is a safe circling altitude, and these
10 things change. For instance, if a radio tower or
11 television tower was to be built, then the chart would
12 become obsolete, and we had repeatedly -- usually on a
13 monthly basis you receive updated charts through the
14 mail which you are required by law to change and, of
15 course, not just law, but common sense because it would
16 be dangerous not to.

17 Q And Josephson was responsible for keeping these manuals
18 up to date?

19 A He was.

20 Q And did he perform this responsibility?

21 A No, he didn't.

22 Q Was he ever spoken to?

23 A Yes, he was.

24 Q And by whom?

25 A Ted Bell.

1 Q And did he have any other responsibilities, administra-
2 tively?

3 A Yes, he was required by regulation, or regulations of
4 the F.A.A. to keep up duty times, flight times, on a
5 regular reporting form, and we were reprimanded by the
6 F.A.A. for the poor condition of his reports, as well as
7 our monthly I.B.M. inspection team, who reprimanded
8 us for the same thing.

9 Q Were there any other factors that you considered in this?

10 A Yes, we had a complaint of a dangerous flight in which
11 he was co-pilot . The flight was conducted in a dan-
12 gerous way.

13 Q And now, have you discussed all of the matters that were
14 discussed by you and Mr. Bell --

15 A (Interrupting) I am sorry?

16 Q Have you covered all of the factors that you took into
17 account before you decided to discharge Josephson?

18 A There was one other important point that we had, and
19 that was harassment of the office personnel.

20 Q Would you explain what you mean by that?

21 A Yes. It was the duty or the responsibility of the
22 office personnel to set up scheduling, to assign the
23 aircraft to flights. It is a very involved, complicated
24 process and it takes quite a talent and a lot of
25 experience to learn this as to how to assign a flow of

1 aircraft throughout the day so that we match the
2 number of passengers with the size of the aircraft.
3 He just harassed the girls about it. 'You are not doing
4 it right. I think it should be done this way,' and of
5 course this is something that we couldn't tolerate
6 having co-pilots come into the girls each time with their
7 own ideas.

8 Q And was that reported back to you?

9 A Yes, by the House Personnel.

10 Q Now, on October 3, 1974, you had a conference with
11 Josephson concerning his discharge?

12 A Yes.

13 Q And do you recall when that was: in the morning or
14 afternoon?

15 A My recollection was that it was in the morning.

16 Q All right. Now, what did you say to him at this time?

17 A Well, he asked to meet with me, and he complained about
18 the discharge, and I said, 'You know that I have
19 repeatedly warned you that you are on thin ice, and
20 that you have got to comply with what is asked of you,'
21 and so that he --

22 Q (Interrupting) Excuse me, have you previously had any
23 other conferences with Josephson regarding his
24 performance?

25 A Yes, I would say at least eight times.

1 Q And would you advise us what was being discussed with
2 Josephson in these conferences?

3 A Yes, primarily his attitude, his not being available,
4 his interference with Captain duties, his lack of
5 attention to things required and documents, such as the
6 Air Canada, and the complaint I got from the I.B.M.
7 monthly report about his record-keeping.

8 Q What would he say to you in regard to these complaints?

9 A Well, he acted like he was going to do something about
10 it.

11 Q Was he given any warning as to his employment status?

12 A Yes, about a month before he was discharged I told him
13 that that was the last time I was going to intercede
14 for him. The next time he was leaving.

15 Q Now, going back to the meeting that you had with him
16 regarding the discharge, what did he say to you?

17 A He claimed that I never talked to him, never warned
18 him about his being on thin ice and that he would go.
19 He asked me several times if I was firing him because
20 of union activity.

21 Q And what did you say to him?

22 A I said I don't know anything about your union activities,
23 and you know I have talked to you repeatedly about your
24 employment here, and I have warned you that you were
25 on thin ice.

1 Q Was there anything else said by either yourself or
2 Josephson at that meeting?

3 A We might have discussed some of the incidents, but
4 essentially that was it.

5 Q Now, there was a third person who was discharged at this
6 time, Michael Baan, and did you discuss or evaluate him
7 at your conference with Ted?

8 A Yes, I did.

9 Q And what factors were taken into account on that
10 evaluation session?

11 A I am sorry, but would you repeat that question?

12 Q What matters were discussed concerning Baan's staying
13 with the company, when you had this session with Ted
14 Bell?

15 A All right. We talked about the economic cutback, and
16 I indicated that since Baan had not been here more than
17 two weeks, or less than two weeks, that I felt he should
18 go. I was aware, at that time, that we were not going
19 to win the contract on the jet for I.B.M., even though
20 I had not had the official word, but I knew that we were
21 not going to get that contract, and we were not
22 competitive, and I knew that Bill Ferber was coming
23 back into the operation as the Captain who was assigned
24 to flying the I.B.M. staff in the Washington area, and
25 he was going to come back to Binghamton, as well as his

1 co-pilot.

2 Q And were there any other -- I withdraw that question.
3 Did you, yourself, form any opinion as to the progress
4 being made by Baan as a co-pilot?

5 A Well, he didn't do enough flying to form any opinion,
6 because not all of the training that he gets is necessarily
7 with another instructor. My own opinion that I had of
8 him, while he was in the office, he would stay in the
9 area in which I was, and he was back and forth
10 continuously, and he seemed to be sort of sullen, I
11 would say, and he did not seem to me to have the
12 personality that was necessary to be a charter pilot.

13 Q Do you have any knowledge as to when he was interviewed
14 for the job?

15 A Yes, he was interviewed, according to the record, on
16 August 22nd, 1974, and hired that date.

17 Q And in August of 1974 did you have any plans for the
18 future with the company?

19 A Yes, we were onto our expansion program. During that
20 period, we were heavily increasing our staff.

21 Q And was Baan being trained to fly the Metro?

22 A No, he was not being trained to fly the Metro, but he
23 was being trained as an additional Captain to take
24 Captains who were flying these smaller aircraft out
25 so they would be relieved from that duty, and moved up

1 into the larger aircraft, and then he would be checked
2 out into the smaller aircraft.

3 Q Now, did you speak with Baan at the time of his discharge?

4 A No, I didn't.

5 Q Mr. Winston, at this time Robert Slough was discharged,
6 on October 3rd, and did you have any knowledge as to his
7 arrangement with the Teamsters to come to that meeting
8 on October 2nd?

9 A I have no knowledge of that.

10 Q Did you have any knowledge of the fact that he was
11 introducing the pilots to Calder at that meeting?

12 A None whatsoever.

13 Q All right. At the time that you discharged Josephson,
14 did you have any knowledge that he had attended that
15 meeting that night?

16 A No, I didn't.

17 Q And finally at the time that Baan was discharged, did
18 you have any knowledge that he was in attendance at that
19 meeting?

20 A No, I didn't.

21 Q Now, there has been testimony concerning talks which
22 you gave to the pilots and co-pilots on October 5th,
23 and do you recall those talks?

24 A Yes, I do.

25 Q And referring first to the meeting of the co-pilots on

1 October 5th, were you in the court room when the tape
2 was played, is that correct?

3 A Yes, I was.

4 Q And let me ask you this: is what you heard on that tape
5 substantially correct as to what you said at the
6 co-pilots' meeting?

7 A It is.

8 Q Now, was there anything additional said by you at that
9 meeting?

10 A Yes, the tape was cut at the point at which I was in the
11 process of reading a prepared speech.

12 Q All right.

13 THE CLERK: Defendant's Exhibit A-a,
14 marked for identification.

15 (Document marked Defendant's Exhibit
16 A-a for identification.)

17 BY MR. RICHARDS:

18 Q Now, I show you Defendant Exhibit A-a, and ask you if
19 you can identify that document (Offering)?

20 A Yes, I can.

21 Q And what is that document?

22 A This document is a speech prepared by my labor attorney,
23 and it was recommended that I read this before our
24 group of pilots.

25 Q And in listening to the tape the other day, was a portion

1 of that speech on at the end?

2 A Yes, it was.

3 Q May I see it.

4 MR. RICHARDS: I would like to introduce
5 Defendant's Exhibit A-a into evidence (Offering to
6 Counsel).

7 MR. CHALENSKI: May I have some Voir Dire?

8 THE COURT: Yes.

9 VOIR DIRE EXAMINATION

10 BY MR. CHALENSKI:

11 Q Is this a copy of what you read that day? Is this a
12 copy?

13 A Those are the words that I read.

14 Q This is, though, a copy and it is a copy of the specific
15 document that you read to the pilots and co-pilots that
16 were organized on October 5th?

17 A I can't tell you -- I have many copies of the same
18 speech. I do not know if that is the original or a copy
19 of it, but if it is a copy, it is an exact copy.

20 MR. CHALENSKI: I have no objection.

21 MR. RICHARDS: May the witness read this
22 statement to the jury?

23 THE COURT: Sure.

24 THE WITNESS: I started by saying that--

25 BY MR. RICHARDS:

1 Q Just a minute. Go ahead.

2 A 'Many questions have been raised about the pilots'
3 union attempts to organize our companies. I thought
4 it would clear the air if we got together to hear the
5 questions, the answers, and then, if you want, just
6 generally discuss the issues for a while afterwards.
7 I am going to read the questions and answers for two
8 reasons: one, we don't want anyone to say we have done
9 anything wrong and, two, we want you to know that we have
10 given much thought to our position. We also think that
11 unionizing is serious business, having a long range
12 effect on both of us. For you to make a reasoned vote,
13 you should know our views as well as the unions' on this
14 issue .

15 'One: Why are we against having a union
16 here? Unions demand, if fulfilled, could have adverse
17 effects upon our business. We could become non-competi-
18 tive if our costs get too high. If this occurs, we can
19 expect to lose business. These demands also effect us.
20 Loss of business means loss of jobs. If the union and
21 we are unable to agree, the union may strike. This
22 costs you money, as well as us.

23 'The role of our pilots is important to
24 us. The union can cost you a lot of money. Dues for
25 pilots are \$200.00 per year. Dues for co-pilots are

1 \$120.00 per year. We don't know about initiation fees,
2 strike funds, special assessments and fines. But these
3 are all possible costs now or at some time in the future.

4 'If we thought that you really would
5 be getting something for your money, other than glittering
6 promises, we wouldn't say anything. But if you find you
7 are spending your money for nothing, you are going to
8 be unhappy, and if you are unhappy, we are affected.

9 'We do not think these possibilities
10 are in the best interest of us all.

11 'Number two: What will happen if I don't
12 vote for the union? Answer: The answer to this question
13 is simple, the law specifically says that you have the
14 right to vote for a union. But the law is just as
15 specific in saying that you have the right to vote
16 against the union and for your company, even if you have
17 signed a card. Let me repeat that, you can vote no,
18 even if you have signed a card.

19 'Three: Will my ballot be absolutely
20 secret? Will anyone know how I voted? Answer: The
21 United States Government will have full supervision
22 while the balloting is going on, and will protect you
23 from interference from any crime or threats by anybody.
24 Your ballot will be absolutely secret. The ballots will
25 not bear any names, numbers, or other marks by which

1 they can be identified. The only marking on the ballot
2 will be the 'X' that you make alone and in secret.

3 'Four: Do you need an outside organization
4 and do you need to pay dues to retain the rights and
5 benefits you now have? No. We have no intention whatso-
6 ever of abandoning the policies which we have instituted
7 on rights and benefits. We have done what we have done
8 because we thought it fair, just and proper. We don't
9 intend to become unfair, unjust or improper because of
10 a union.

11 'Five: If the union should win the
12 election, will the employees have to go out on strike?
13 Answer: The weapons unions have to try and force the
14 companies to agree to unreasonable demands that unions
15 always promise is to call an employee strike. Promises
16 are cheap. Fulfilling these promises is something else.

17 'Six: If the union calls employees out
18 on strike, will they be paid while the strike is going
19 on? Answer: No. If you don't work, you don't get paid.
20 The company will not pay your wages, and neither will
21 the union. Sometimes unions pay a few dollars to strikers
22 to carry picket signs. If strike benefits are paid out
23 by the union, the amounts are small.

24 'Get a definite committment in writing
25 from the union as to what you will get when you are out

1 on strike. Also, remember, you don't get unemployment
2 insurance from the state while you are out on strike.

3 'Seven: If the union wins the election
4 will I be forced to join? Answer: Don't let anyone kid
5 you, the union is going to try to get a union shop clause,
6 if they win, which would require everyone of you to join
7 the union within some sixty days after the execution of
8 the contract. If the union doesn't get that requirement
9 put into the contract, it may not get any dues from you.
10 Unions don't like free-loaders. Afterall, they are not
11 in the business of organizing people just to help you.
12 They make their living, and frequently, damn good
13 livings off your dues.

14 'Eight: Am I bound to vote for the
15 union because I have previously signed an authorization
16 card, or applied for union membership? Answer: No.
17 Application for union membership, or union authorization
18 to bargain for you is something that you can change,
19 and can be revoked at any time. Signing of the cards
20 does not bind employees to vote for the union in the
21 election. The election will be by secret ballot, and
22 no one will know how you vote. This means neither the
23 company nor the union will know how you vote.

24 'Nine: Why shouldn't you join a union
25 and pay your own money in dues and initiation fees

1 and fines? Answer: Union or no union, this company
2 has and will always pay competitive and fair wages and
3 benefits. The union cannot force us to pay more than
4 we can afford to pay. This company has always
5 recognized the principle of seniority if the employee
6 is able to do the available work so that a union is not
7 needed for job protection. The company can give you more
8 insurance than the union because it is a company that
9 provides the work and strives to maintain full employment.
10 With the union there are always the dangers of strikes,
11 and work stoppages with consequent unemployment. This
12 is not insurance, this is built-in insecurity.

13 'Ten: The union agent probably told you
14 that with a union, you get everything that you now have
15 plus more. Is this true? Answer: If the union is
16 successful in gaining control over you, the company
17 would not suddenly change its ways of doing business.
18 We have tried to be fair in the past, and will continue
19 to be fair, but, remember, all the law requires is that
20 we bargain in good faith with the union. No one knows
21 what would result from these negotiations. You might
22 get more, you might get less, or you might receive the
23 same as you are now getting. With a union you might
24 be throwing away something you know is good. We do
25 know one thing for certain: if you go union, you put

1 the union in a position to horse-trade with your wages,
2 benefits, working conditions, and your job.

3 'Eleven: Would the union help me keep
4 my job? Answer: No. With or without a union, an
5 employee at our company is discharged for cause only.
6 It is our policy not to discharge anyone unless there
7 have been previous warnings, except where the cause
8 for discharge is so aggravated that there can be no
9 real argument about immediate termination of employment.
10 Remember, please, that business, charter and scheduled
11 customers create jobs; unions don't. If business is
12 down, the company has the right to lay off. We have
13 never done this even though business has been down from
14 time to time. No union can do more for you.

15 'Twelve: Can you lose your jobs if there
16 is a strike? Answer: If the union makes you strike
17 and forces it demands on us, then by law we are permitted
18 to replace strikers. We are not required to go out of
19 business if a strike is called, and when a strike is
20 over, we are not forced to rehire you. You know the
21 depressed state of the aviation business, and the
22 pilot and co-pilot job situation as well as I do. Most
23 of the co-pilots here are new here.

24 'Thirteen: If we don't like the union,
25 can we get rid of it? Answer: What if you are in

1 the union and you are fed up? You are sick of dues and
2 strikes which sometimes occur. Lost wages and confusion?
3 Is it very difficult to change things? In fact, almost
4 impossible. You will be up against the union machine,
5 and there are very few cases where whatever the discon-
6 tent, individuals have been able to throw out a union.
7 You would almost say that if a majority votes for the
8 union, you are stuck with it.

9 'Fourteen: How much does a union really
10 trust you? Answer: Not very much. They don't even
11 trust you to pay dues. Most union contracts require
12 that the company collect the dues by payroll deductions.
13 In other words, you don't send in your dues because you
14 are pleased with the services, if that is what it can
15 be called, that the union is providing. You may end up
16 paying your dues because the union requires the company
17 to deduct dues from your pay so that it could then become
18 forced to do the unions' dirty work and collect its
19 dues from you.

20 'Fifteen: If you don't pay dues, will
21 the union want the company to discharge you? Answer:
22 Let's say that you get disenchanted with the union and
23 you don't want to pay your dues. The union will
24 probably want the company to agree in collective bargaining
25 to discharge any employee for failure to pay membership

1 dues. Again, the union turns not to you to persuade
2 you or to tell you to pay the dues, but to the company
3 to compel it to fire you if you don't pay the dues.

4 'Sixteen: Will there be a shop steward
5 if the union gets in? Answer: No doubt the union
6 has already promised that someone who works here and
7 has worked hardest for the union, and he may not be the
8 best man to lead you. He probably wants the job because
9 he wants power over all of you.

10 'Seventeen: Do you have to attend union
11 meetings? Answer: You don't have to go to union
12 meetings if you don't want to, but you may find the
13 union making decisions for you in your absence, which
14 may not necessarily be in your best interest.

15 'Eighteen: Can the union guarantee
16 anything? Answer: No union can guarantee the employees
17 anything. The truth is the union produces nothing of
18 value. They don't bring us customers, they don't buy
19 our airplanes, they don't spend any money at all to
20 improve the company's plant, equipment, or business.
21 Only the company spends this money and therefore, it is
22 the company which must and will decide what is economically
23 sound. We all know that Commuter used to be important
24 in the industry, Commuter and Trade Winds, and they are
25 not here any longer.

1 Eighteen: Don't I need experienced help
2 such as the union offers to plead my grievances?

3 Answer: When a union agent intervenes in an employee
4 grievance most often union policy comes first and the
5 employees' cause comes second. With the union as the
6 exclusive bargaining agent for employees, it may bind
7 you in the adjustment of your grievance, whether you
8 like it or not. With a union there will be no handling
9 of employee complaints, unless the union agents are
10 notified and allowed to be present. Sometimes unions
11 play favorites, and you may not be the current favorite.
12 At that time, the union may not even give any consideration
13 to your grievance, however reasonable it may be.

14 'Everything I have told you is a fact.
15 For a minute, let's talk about a view of my own: I
16 like working with you, I like being able to talk with
17 you directly, and hope that you feel perfectly free to
18 talk to me the same way. I hope that we can continue
19 working together the same direct and open way. That
20 won't be permitted to continue. Instead of working
21 as a team together, we each must work with the union.

22 'Now, back to some more facts. If
23 you have signed the card for the union, it is not
24 binding in the election. The United States Government
25 supervises this union election, and guarantees complete

1 secrecy. You are absolutely free, even if you have
2 signed the card, or leaned toward the union to vote
3 just as you wish. Anyone who tells you differently is
4 not telling you the truth.

5 'Please remember it is not essential
6 that you vote. The only way that you can vote no is
7 by not voting. All the ballot allows you to do is vote
8 yes for the union. There is no place on the ballot
9 to vote no. Unlike the elections we are used to, you
10 vote not only by sending your ballot in, or mailing in
11 a blank ballot, if you wish. Read the facts which we
12 will continue to make available to you. If you have any
13 questions, please bring them to me after this meeting.
14 I will always be available to answer questions, or
15 help you in any way possible. I want to make it very
16 clear that I will always be ready as usual to discuss
17 any problems anyone may have. What is best for you
18 I can only say that you have confidence in your company,
19 and your management, and thank you for your attention.'

20 Q Now, Mr. Winston, apart from what was on the tape, and
21 what you have just read from the statement, was there
22 anything else that you said to the pilots or the co-pilots?

23 A No.

24 Q Were you aware of the fact that at the co-pilots'
25 meeting, it was being taped?

1 A No.

2 Q Now, I believe that you said that you earlier had a

3 meeting with the Captains, is that correct?

4 A That is true.

5 Q And do you recall what time of day that was?

6 A At one p.m.

7 Q And was that before the co-pilots' meeting?

8 A Yes.

9 Q Now, what did you say to the Captains at that meeting?

10 A Essentially the same thing I said with the co-pilots.

11 Q Do you have any recollection of anything different that

12 you might have said at the Captains' meeting as opposed

13 to the co-pilots?

14 A No.

15 Q At the Captains' meeting did you say that if the pilots

16 voted for the union you would close the doors, sell

17 your planes, and the Captains would be without jobs?

18 A No, I said nothing different.

19 Q Did you say at the Captains' meeting that if the union

20 was voted in you would cut out less productive routes?

21 A I did not.

22 Q And did you say at the Captains' meeting that you did

23 not have to put up with the union and in the event that

24 they were voted in, you would sell the business and

25 retire?

1 A Absolutely not.

2 Q Now, at some point, Mr. Winston, you begin to have --

3 I withdraw the question. There was another meeting on

4 October 19th, which had earlier been referred to as the

5 Metro ground school, and do you have a recollection of

6 that meeting?

7 A Yes, I do.

8 Q And did you speak with some of the pilots at that

9 meeting?

10 A Yes.

11 Q And did you recall the circumstances for that group

12 being together?

13 A Well, the group, it was a Saturday, and the group was

14 in ground school for Metro Transistion Training.

15 Q And did you ask Ted Bell to speak at that session?

16 A Yes, I did.

17 Q And did you thereupon talk to the group?

18 A Yes.

19 Q And how long would you estimate your talk lasted?

20 A Twenty minutes to a half hour.

21 Q Now, what did you say to the pilots at that ground

22 school session?

23 A I started by reading an article which had been given to

24 me by Captain Solberg, relative to --

25 MR. CHALENSKI: Your Honor, I object.

1 This is, I believe, the same article that we discussed
2 four or five days ago.

3 THE COURT: Sustained.

4 MR. RICHARDS: Your Honor, I --

5 THE COURT: (Interrupting) Sustained.

6 BY MR. RICHARDS:

7 Q All right, Mr. Winston --

8 THE COURT: (Interrupting) That is not
9 to sustain anything that he wants to say, but what was
10 in his mind, and where he learned it, or what he read --

11 MR. RICHARDS: Or anything that might
12 have been said at that meeting?

13 THE COURT: Anything that he said.

14 MR. RICHARDS: What did he say?

15 THE COURT: Anything that he said.

16 BY MR. RICHARDS:

17 Q What did you say at that session, Mr. Winston?

18 A I indicated that Captain Solberg had given me this
19 article which appeared in the Reader's Digest about
20 the Teamsters Union mishandling of pension funds, and
21 I read the article, which explained how the pension
22 funds had been mishandled by the Teamsters, and after
23 reading the article, I simply said that in addition,
24 I have a friend who had an experience with the Union
25 on pension funds. This woman's husband had just died,

1 and he had a prolonged illness, and heavy medical expense,
2 and he was a member of a union, and when she applied for
3 the union benefits, they indicated they weren't sure
4 that that particular branch of the union had to pay the
5 benefits, and that she would have to produce her payroll
6 records for the last twenty years to prove to the Union
7 that she was entitled to these benefits. She pointed out
8 that not only was her husband a member of the union, but
9 she was also a member of the union, and having reached
10 no success, she was forced to hire an attorney to
11 represent her to get her Union benefits.

12 Then I went on to point out that this
13 is not the way it works in our company. You, the
14 members of our company, have no problem getting their
15 benefits, and I talked about Bert Malstrom, a mechanic
16 who had been with us for about four years, and had
17 suddenly died, and went to the hospital on Friday, and
18 on Monday morning he was dead. No warning to us or anyone
19 in the company.

20 When he died, the company paid, through
21 its pension plan, and other plans, all the medical
22 expenses, all the funeral expense, and his wife, who
23 was left with five children, five young children, and
24 the man was about thirty-four years old with five young
25 children, and they had just finished building a home,

1 and our company was going to pay her, through our pension
2 plan, in excess of \$20,000.00.

3 Q Was there anything else that you told this group
4 regarding company benefits.

5 A Yes, I continued on with one of our captains who was
6 retiring, Captain Excell. He had been with the company
7 for eight years, and was taking an early retirement,
8 and was only fifty-four years old. Our retirement plan
9 is to the age of sixty-five, and because he was retiring
10 early that he would not get the full amount of the
11 retirement, but nevertheless, he was getting in excess
12 of \$12,000.00 when he left the company, which for the
13 amount of time that he had been with the company,
14 averaged about \$30.00 per week, which means that the
15 company had paid into this pension plan to benefit him
16 in the amount of \$30.00 a week for each and every week
17 that he had worked with the company during those eight
18 years.

19 Now, of course, if he stayed the full --
20 until the age sixty-five, his benefits would have been
21 more than \$30.00 per week.

22 Q Were there any other benefits discussed?

23 A Yes, then I went into a Teamster Union contract which
24 I had just received from Golden West, located in Los
25 Angeles, California. I explained the background of my

1 receiving this Teamster Union contract. When I learned
2 of the Teamsters organizing our pilots --

3 Q (Interrupting) Incidentally, Mr. Winston, when did you
4 learn about that?

5 A My notes and recollection indicates that I learned about
6 on October 7th, 1974.

7 I told the group that I had talked with
8 one of the officers of Golden West. They were a very
9 large Commuter Operation, and I gave them the background
10 that about three years earlier there had been five
11 Commuter flight services in the Los Angeles area, and
12 they were competing with each other, and all doing rather
13 poorly, and they had decided that they would get together
14 and form one company instead of five, and combine the
15 personnel and see if they could develop a viable, healthy
16 company. They did that. However, there was a rather
17 disgruntled attitude among the employees. One said,
18 'Well, I have been with my company longer than you have
19 been with your company, and I should get more seniority
20 than you have.'

21 Then another one said, 'I was earning
22 more money with my company than you were earning with
23 yours, and why should I get the same thing as you.'

24 This attitude resulted in bringing in
25 the Teamsters Union, and the Teamsters Union was

1 elected to represent Golden West. It was related to me
2 that 1 that three-year period since the formation
3 of that company, they had a deficit of \$18 million
4 dollars. They approximately eighteen or nineteen twin
5 Ottos, which are nineteen passenger aircraft, and they
6 weren't doing well. That is losing the \$18 million
7 dollars is a pretty bad reflection of the way the company
8 was doing, and the airline.

9 Q Did you relate to that Golden West contract?

10 A That is what I was telling my people. What I am saying
11 now is what I said in that meeting, and I said that
12 Golden West -- the management of Golden West said that
13 they are actually a replacement management, that the
14 management that was there three years earlier is there
15 no longer. He is part of the new management. He is
16 an officer of the company, and that frankly he couldn't
17 see what the new management could do to turn this situation
18 around.

19 He offered to send me immediately, if I
20 wanted it, copies of their Teamsters contract, and they
21 had Teamsters contracts with the pilots, the mechanics,
22 and the line personnel. He offered to send me copies
23 of the contract not only of the initial contract, but
24 the renewal contract. He did, and about a week later
25 I received it, and read through these contracts, and I

1 was -- I could see why they lost \$18 million dollars,
2 and I related this to our people in this ground school
3 class and I indicated that if we have to sign a contract
4 like that that we, too, will follow Golden West, that
5 we will lose money, that it would necessitate, I felt,
6 that we would just go out of business.

7 Q Did you say anything about padlocking the doors of the
8 entire thing?

9 A I said that I had been working for thirty-four years
10 in aviation. I had been rather successful, working hard,
11 and that I was not about to accept a contract which
12 would put the company into bankruptcy rather than do
13 that, I am going to pick up my marbles and just retire.

14 Q All right. You heard testimony last week from Mr. Hummell
15 concerning various operations that you said that you
16 would follow in the event that a union was voted in,
17 is that correct?

18 A That is incorrect. Well, I heard him say it, but what
19 he said was incorrect.

20 Q Now, did you have copies of those Teamsters contracts
21 with you on that date?

22 A Yes, I did.

23 Q Was there anything else that you said at that October
24 19th meeting?

25 A Yes, I also related what options were open, if I had to

1 sign a contract like that. If I had to sign a
2 disastrous contract, then I would have -- I could
3 reduce our schedules to the more profitable routes.
4 We had many routes that were a lost operation. It was
5 a research and development, really, and you have to
6 expect a loss when you start, and that we would simply
7 contract under that type of a contract, and we would
8 have to restrict and, yes, sell off some aircraft, and
9 cut our routes down, and just do what was necessary in
10 facing such a contract.

11 Q All of these options, or any of these options could occur
12 in the event that you were forced into signing a
13 contract such as Golden West?

14 A Yes, this contract that was with Golden West.

15 Q And do you recall anything else that you said to the
16 pilots at that meeting?

17 A I think that that was pretty much the essence of what I
18 said.

19 Q And did any of the pilots say anything to you?

20 A No comments.

21 Q And you said that you thought the session lasted around
22 thirty minutes?

23 A No, twenty minutes to half an hour.

24 Q And there came a time when you met individually with
25 some of the pilots, is that correct?

1 A Yes.

2 Q Now, we have heard testimony from Douglas Ton, that
3 he met with you individually, through an appointment
4 made by the office. Do you recall that conference
5 with Douglas Ton?

6 A Yes.

7 Q And what was said, and what did he say at that conference?

8 A Basically I talked about the same topics that I had made
9 in both talks. He indicated to me that as far as he
10 was concerned, he was against the union. He had already
11 offered his ballot to me at an earlier time.

12 Q Prior to this meeting?

13 A Prior to the meeting.

14 Q And do you recall the occasion when he offered the
15 ballot?

16 A Yes.

17 Q And do you know where it was?

18 A Well, it was in Binghamton, but I was on a flight with
19 him, and he was my co-pilot, down to Newark. It was
20 a scheduled flight, and we got to talking about the
21 union, and he told me that he had talked to Ted Bell
22 about how he felt about the union, and that he was not
23 interested in it, and that he wanted to reaffirm the
24 same thing to me that he was not interested in it, and
25 that he would like to offer his ballot to me. And I

1 said,' Fine, if you want to give me your ballot, I will
2 take it,' and he did give it to me when he returned to
3 Binghamton.

4 Q Are you sure that you didn't say anything else to him
5 on the flight, concerning the ballot?

6 A No.

7 Q And you didn't ask him for the ballot?

8 A No, he offered it.

9 Q And I gather that you subsequently had a private meeting
10 with him, is that correct?

11 A Yes.

12 Q And do you recall what he said at the private meeting?

13 A He repeated that he was for the company, and against the
14 union, and I felt -- I related, when I left the co-pilots'
15 meeting on October 5th, that we would have everybody
16 in for a private meeting so that they would, if they had
17 any concern about stating their feelings at a group
18 meeting, they could speak privately, if they wished.

19 Q All right. Can you recall anything else that was said
20 at this meeting with Ton?

21 A No.

22 Q And did you have a meeting with Mr. Sholl?

23 A Yes.

24 Q And can you recall approximately when that meeting
25 occurred?

1 A It was sometime after the October 5th meeting, and prior
2 to -- prior to the election.

3 Q All right. And would you tell us what Sholl said, and
4 what you said?

5 A Yes. Sholl came in and said that, ' I have already marked
6 my ballot -- I received my ballot and I have already
7 marked it,' he said.

8 Q Is that the first thing that he said?

9 A I said, 'Fine, don't tell me how you voted. I just want
10 to talk to you and see if you have any questions,' and
11 we spoke again about essentially the same material that
12 we covered in the previous two meetings.

13 Q How long would you estimate that your meeting with
14 Sholl lasted?

15 A Twenty minutes.

16 Q And can you recall anything else that you said to Sholl
17 at that meeting?

18 A No.

19 Q And can you recall anything that he said to you concerning
20 that meeting?

21 A He did not express how he voted. He said that he had
22 voted his ballot, and mailed his ballot in, and he did
23 not say how he voted and I told him I did not want to
24 know.

25 Q And did you ask him for his ballot?

- 1 A He didn't have his ballot for me to ask him.
- 2 Q And was that the only meeting that you had with Sholl?
- 3 A Yes.
- 4 Q And did there come a time when you had a meeting with
- 5 William Lamos?
- 6 A Yes.
- 7 Q And was or did this fall within the same period between
- 8 October 5th and November --
- 9 A (Interrupting) It did.
- 10 Q And would you tell us what Lamos said, and what you said
- 11 at that meeting?
- 12 A We discussed, again, the same elements of the previous
- 13 two meetings. The talk that I had with everybody was
- 14 pretty much the same.
- 15 Q And when you say the same as the meeting you are talking
- 16 about the October 5th meeting?
- 17 A Yes, the October 5th meeting, and the October 19th
- 18 meeting.
- 19 Q All right.
- 20 A And he indicated to me that he was glad I called him in
- 21 to talk with him. He had not mad his mind which
- 22 way he felt about the Union, and left it at that.
- 23 Q Did Lamos say to you, when he walked in, that this was
- 24 a personal matter, or only my business?
- 25 A I don't recollect him saying that.

1 Q In any event, did you ask for his ballot?

2 A No, I didn't.

3 Q Did he indicate that the ballot had been mailed in?

4 A No, he didn't.

5 Q And did you discuss in anyway how he voted?

6 A No.

7 Q Do you recall how long this session lasted?

8 A The same time; twenty minutes.

9 Q How many meetings did you have with him?

10 A This was the only private meeting.

11 Q And did you also have a meeting with Michael Kleitz
12 during this period?

13 A Yes.

14 Q And would you tell us what he said, and what you said?

15 A Yes. Michael Kleitz came in and he said, 'I am against
16 this Union,' and he started to express how opposed he
17 was to the Union activity, that he felt it was not in the
18 best interest of the company, and said that he had
19 talked to Ted Bell about it, and he was or had offered
20 his ballot to Ted Bell, and again he was offering it to
21 me.

22 Q Was there anything else that you said to Kleitz?

23 A We simply talked about our reasons for feeling that a
24 union was not in the best interest of the company.

25 Q And did you ask Kleitz to turn over his ballot in order

1 that he could help the company?

2 A No, he offered his ballot.

3 Q And did Kleitz say anything to you about it being
4 illegal for you to request ballots?

5 A No, he didn't.

6 Q Have you told us everything that you said, or Kleitz
7 said at that meeting?

8 A I think so.

9 Q Was this the only session that you had with Kleitz?

10 A Before the election?

11 Q Before the election.

12 A Yes.

13 Q Now, how about Ronald Williams; did you have a meeting
14 with him?

15 A Yes, I did.

16 Q And again, was that during the same period of time?

17 A It was.

18 Q And would you tell us what he said, and what you said
19 at this meeting?

20 A He said that he had been with the company a long time,
21 and he felt that the best way for the pilots was to go
22 along with the company to show the company that he was
23 behind it, and he offered his ballot.

24 Q Well, before he offered the ballot, did you ask him for
25 the ballot?

1 A I didn't.

2 Q And did you ask him whether he supported the company or
3 whether he supported the union?

4 A No, I didn't. That was not the intent of my discussion.

5 Q Did Williams make any comment about being a junior
6 member of the staff, and that he would weigh both sides
7 and then make up his mind? Do you recall him saying
8 that?

9 A No.

10 Q Did you, at this session with Williams, hold up a
11 yellow pad with a list of names and you indicated that
12 these were the men or pilots that supported the union,
13 or, I am sorry, supported the company?

14 A I did not.

15 Q Have you told us everything which you said, and Williams
16 said at that meeting?

17 A I think that I did.

18 Q And was that the only meeting that you had with Williams?

19 A Yes.

20 Q And did you have a meeting with Dennis Larimore?

21 A Yes.

22 Q And again, was that in the same period of time?

23 A Yes, it was.

24 Q And would you tell us what you said, and what he said
25 at the meeting?

1 A Well, he came in and said that he voted his ballot and
2 sent it in and he didn't indicate how he voted, and I
3 said I didn't want to know how he voted.

4 And then I went on to continue with the --
5 with the point that I had discussed in the October 5th
6 meeting and the October 19th meeting.

7 Q Do you know how long your session with Larimore lasted?

8 A Same thing, twenty minutes or so.

9 Q And from your testimony I gather that you didn't ask him
10 for his ballot?

11 A He said he had mailed his ballot in.

12 Q And after learning that, you didn't ask him how he voted?

13 A I specifically said I don't want to know how you voted.

14 Q And following this exchange with Larimore, did you then
15 discuss company benefits?

16 A I am sorry?

17 Q Have you told us everything that was said?

18 A Yes.

19 Q Did you have a meeting with James Hummell?

20 A Yes.

21 Q And was it over the same period of time?

22 A Yes.

23 Q And can you recall what was said at that session?

24 A Yes, he came into the meeting and he said I have mailed
25 my ballot, and I have voted for the company.

1 Q Is that how the meeting started out?

2 A That is how it started.

3 Q And did Hummell speak first?

4 A Yes.

5 Q And you hadn't asked him for his ballot?

6 A No, he started off by saying, 'I have mailed my ballot.'

7 Q Did he say anything further?

8 A I told him that regardless of whether he had mailed his
9 ballot or not, I think that we should still discuss
10 the pros and cons.

11 Q And did you thereupon discuss the pros and cons?

12 A Yes, I did.

13 Q And for how long?

14 A The same period of time; about twenty minutes.

15 Q Do you recall, did you make any reference at this
16 meeting as to those pilots who were loyal to the company,
17 by turning over ballots?

18 A He had already mailed his ballot.

19 Q But in any event, you made no reference to it?

20 A No.

21 Q And you didn't show any list of pilots that supported
22 the company?

23 A No.

24 Q Have you told us everything that, to your recollection,
25 Hummell said?

1 A Yes.

2 Q And how about Jan Solberg; do you recall having a
3 session with him?

4 A Yes.

5 Q And was this throughout or during this same period of
6 time?

7 A Yes, it was.

8 Q And what did you say and what did he say to this?

9 A Solberg came in and expressed how he was for the
10 company, and he was against the union and basically
11 offered his ballot.

12 Q Now, before he offered his ballot, did you ask him for
13 his ballot?

14 A No, I didn't.

15 Q Did you again make any reference to those who were loyal
16 to the company?

17 A Absolutely not.

18 Q And do you recall anything else that he said?

19 A We continued talking about the elements of the pros and
20 cons of the union, and supporting the company; the
21 pension plans and so on.

22 Q And again, the meeting lasted for how long?

23 A About twenty minutes.

24 Q Now, did you have a meeting with Paul Briggs?

25 A Yes.

1 Q And again, was that within this period of time?

2 A It was.

3 Q And what did Mr. Briggs say at that meeting?

4 A His approach was a little different from everybody else.
5 He said he was opposed to the union, that if the union
6 got in with Commuter Airlines, as far as he was concerned,
7 he was going down the road.

8 Q All right. And was anything further said by either of
9 you at this meeting?

10 A We talked about the essence of our previous meetings,
11 the way he could vote, and that is that he could send
12 this ballot in and if it was marked with an 'X', it was
13 voted for the union. IF he sent it in blank, that was
14 a vote against the union, or if he didn't send it in,
15 that was also a vote against the union.

16 He asked me if I wanted his ballot, or
17 offered his ballot, I should say, and I said if he
18 wanted to give me his ballot I would accept it. And
19 he said that he did not have it with him but that he
20 would bring it in.

21 Q And did he subsequently bring it in?

22 A Yes, he did. But I was not present when he brought it
23 in.

24 Q Was it reported to you what was said at the time he
25 brought the ballot in?

- 1 A Yes. He gave the ballot to my wife and said, 'Here is
2 my vote for Ted Bell.'
- 3 Q How, did there come a time in this period when you
4 learned that the pilots were getting duplicates ballots?
- 5 A Yes.
- 6 Q And do you recall approximately when this was?
- 7 A Almost immediately after I had completed my discussions
8 with our pilots.
- 9 Q When would this be in relation to the election day of
10 November 25th?
- 11 A I would say it was quite a bit before election day.
- 12 Q Several weeks?
- 13 A At least, I would say.
- 14 Q And how did you learn that the pilots were being given
15 duplicate ballots?
- 16 A Ted Bell came in and said that he understood that the
17 pilots have sent in a request for duplicate ballots.
- 18 Q Upon learning this, what did you do?
- 19 A I indicated to him that I was rather surprised and as
20 far as I was concerned, had said everything I was going
21 to say, and I was not going to have any more meetings
22 with anybody and that I wanted no duplicate ballots.
23 I was not accepting any duplicate ballots.
- 24 Q Now, the election was held on what date, Mr. Winston?
- 25 A November 25th, 1974.

1 Q And where were the ballots counted?

2 A In Washington, D.C., at the office of the National
3 Mediation Board.

4 Q And this is under the auspices of the National Mediation
5 Board?

6 A Yes.

7 Q Now, following the counting of the ballots, were you
8 present, is that correct?

9 A Yes, that is correct.

10 Q And was the winner of the election identified at that
11 time?

12 A Yes, the winner was the Teamsters Union.

13 Q And did there come a time when you received certification
14 of this fact?

15 A Yes.

16 Q And do you recall how long after the ballots were counted
17 that you received the certification?

18 A About two weeks.

19 Q Now, did there come a time when you questioned the
20 validity of this election?

21 A Yes.

22 Q And would you relate to us the circumstances under which
23 this suspicion arose in your mind concerning that
24 election?

25 A After the election, a group of pilots came in to tell

me how they voted.

Q And you would take them on an individual basis and identify the pilots and when this took place?

A Yes.

THE COURT: I think that this would be a good place to take our morning recess.

(Whereupon, the Jury was excused.)

THE COURT: Gentlemen, would you come up to the Bench.

(Whereupon, the following took place at the Bench.)

THE COURT: I would like you to take a look at these (Offering). The others will be patterned after these, and I want you to see what you think about it.

MR. RICHARDS: This would be the page where it refers to maintenance and collection and bargaining agreements. This is in subdivision three where we were concerned about the designation of the representative.

THE COURT: Yes, a representative for that purpose.

MR. RICHARDS: Well, I don't have the statute in front of me, but it is under that statute.

THE COURT: This whole statute -- well,

1 it doesn't mean anything as to designating a representa-
2 tive.

3 MR. CHALENSKI: One question: in item
4 four, for the purposes of interferring with, one or
5 more of the employees, is that the same employee who
6 was discharged, or another employee?

7 THE COURT: No, it is not referring to
8 anything.

9 MR. CHALENSKI: The question on the
10 discharge and the cause for the discharge, the conspiracy
11 count alleges threats, but we have not mentioned those
12 with the others.

13 THE COURT: These I am talking about the
14 substantive counts two to fifty-eight.

15 MR. CHALENSKI: That is perfectly satisfactory
16 Your Honor.

17 THE COURT: There is no serious quarrel
18 with this?

19 MR. RICHARDS: No.

20 THE COURT: Are there any questions?

21 MR. RICHARDS: My question is: One of
22 the basic elements would be the knowledge on the part
23 of the Defendant that the employee who was discharged
24 was engaged --

25 THE COURT: (Interrupting) That he knows

1 about this?

2 MR. RICHARDS: Yes.

3 THE COURT: But that element, the element
4 is that he has to know, and obviously in order to know
5 it, he has to know this is the guy who is engaged in
6 a strong suspicion, and he has to deliberately close his
7 eyes to something of that nature. But the key is
8 knowingly and willfully and intentionally, but in order
9 to do that he must know that this employee is engaged.

10 MR. RICHARDS: Fine.

11 MR. CHALENSKI: The one reason I asked
12 about it, for the purpose of interferring with one or
13 more of the employees. In the case of Michael Baan,
14 who was discharged, it is not necessarily obvious that
15 he was choosing a representative after the time that
16 he allegedly spoke at the meeting, but he appeared to
17 be with the others.

18 THE COURT: I say it is suspicion. He
19 has got to be engaged in the exercise of this. Other-
20 wise you don't get off the ground. He has got to
21 discharge that employee because of, let's call it the
22 union activities. That has got to be the motivating
23 reason, or part of it. Otherwise you don't get off the
24 ground.

25 MR. CHALENSKI: This is a second circuit

1 case which held that an employee -- one discharge was
2 because an employee was discharged solely because of
3 union reasons. There was a companion discharge for
4 allegedly the same reasons but no anti-union motivation
5 in the discharge of the other employees except to the
6 consistency in this part over here, and the second cir-
7 cuit held that the discharge of the second -- he wasn't
8 involved --

9 THE COURT: (Interrupting) But it was
10 for the purpose of firing the employees. Did he dis-
11 charge you, abstensively because you can't be counted,
12 and the motive is to discharge others -- well, I have to
13 suspect or have knowledge that you are damaged. This
14 is a criminal statute, and these come up in the context
15 of the civil law where you are not concerned with
16 knowledge and intent. I do not know who selected this
17 case for prosecution in this district, but you are
18 trying to define, for the first time, the element of the
19 crime.

20 To make a crime, the employee -- the
21 employer must either know or suspect that the employee
22 is engaged in union activity of some kind. Otherwise
23 it is not a crime. I don't know how you have that
24 state of mind wholly with pure motives. I think in
25 the second circuit case there was an opinion by

1 Judge Friendly that points that he would be happy to
2 see you go, and even though you happen to be engaged in
3 union activity, he was fired solely on a permissible
4 ground.

5 MR. CHALENSKI: That is permissible?

6 THE COURT: Yes, even though you were
7 engaged in activity, and even though he was happy to see
8 you go. This is not easy. These elements are different
9 in each of these counts.

10 THE CLERK: Court stands in recess for
11 a short time.

12 (After a brief recess, the proceedings
13 were resumed, before the Court and the Jury.)

14 BY MR. RICHARDS:

15 Q Mr. Winston, before the recess you were testifying as
16 to certain facts brought to your attention after the
17 ballot count on November 25th, is that correct?

18 A That is correct.

19 Q And would you relate to the court and Jury the circum-
20 stances surrounding this?

21 A Yes. I had several pilots come to me and indicate
22 that they had not voted. And I remember the first
23 was Douglas Ton who came in and said that he had not
24 voted. He had his duplicate ballot and asked if I
25 wanted it.

1 Q Do you recall when he came to you? Can you put it in
2 a time stance?

3 A Yes, it would be some time after the election of
4 November 25th, and the first week in December. So
5 the last week in November to the first week in December.

6 Q And again, what did Ton say to you?

7 A He said that he had not voted in the election, and that
8 he had his duplicate ballot and do I want it.

9 Q All right. I must say that at the time the ballots
10 were counted, did you identify how the count came in?

11 A Yes, there were seventeen ballots, and sixteen ballots
12 were for the Teamsters, one ballot came in blank, which
13 means against the Teamsters, and there were four ballots
14 that were not cast; eligible ballots.

15 Q And when Pilot Ton, came in, he indicated that he had
16 not cast his ballot?

17 A Yes.

18 Q And what did you say and do upon receipt of that
19 information?

20 A I asked him what he was going to do with the duplicate
21 ballot, and I just didn't accept it.

22 Q And did there come a time when another pilot came in?

23 A Yes.

24 Q And who was that?

25 A Captain Pusztai came in and indicated that he had not

investigate this door drop incident, and if they agreed
1 voted, and that I thanked him for his support, and that
2 was it.

3 Q Did there come a time when another pilot came in?

4 A Yes. John Herrington indicated to me that he had not
5 voted, and indicated that he had his duplicate ballot.

6 Q All right. And again, what did you say?

7 A I thanked him for his support.

8 Q And did you learn about another ballot which allegedly
9 was not cast?

10 A Yes, Ted Bell told me that Captain Hank Excell had been
11 talking to him and indicated that he had not cast a
12 ballot, and he related this -- that is, Ted Bell related
13 this to me.

14 Q And that would have been at least four persons who had
15 not cast their ballots, is that correct?

16 A Yes.

17 Q Consistent with the results of the election?

18 A Right.

19 Q And what information did you learn thereafter?

20 A Captain Solberg came to me and said that he had not
21 voted in the election, had not cast his ballot. This
22 made a count of five, in my mind, and there shouldn't
23 have been a count of five. There were only four ballots
24 that were not cast.

25 Q Now, upon receipt of this information of Solberg, what

2
1 stand did you take?

2 A I called my labor attorney in Washington and related
3 the facts -- these facts, and --

4 Q (Interrupting) Did you receive any instructions as to
5 what to do?

6 A Yes, I followed the instructions by going back to these
7 pilots, these five pilots and asking them if they had
8 their duplicate ballots. Ton, co-pilot Ton said he
9 did, and gave me his duplicate ballot. Hank Excell said
10 he had his duplicate ballot, and he gave me his duplicate
11 ballot. Captain Pusztai said he had his ballot and gave
12 me his duplicate ballot. John Herrington gave me his
13 duplicate ballot, and Captain Solberg also said he had
14 his cuplicate ballot, and he gave me his duplicate ballot,
15 and that was five.

16 Q And once you had these duplicate ballots, what did you
17 do with them?

18 A Well, I copied them and forwarded them to my labor
19 attorney in Washington.

20 Q Did there come a time when you learned that other pilots
21 had not cast their ballots?

22 A Yes.

23 Q And when was that?

24 A During the same period, before I mailed the duplicate
25 ballots to my labor attorney, and I had Captain Kleitz

1 come in and he said -- or rather he came to Ted Bell
2 and said that he had not mailed his duplicate ballot
3 and I asked Ted Bell if he would send him in to see me
4 about this, and he did come to see me and I asked him,
5 'I understand that you did not vote in the election and
6 that you told Bell that you have not voted.' He said,
7 'That is right,' and I said, 'Do you have your duplicate
8 ballot?' And he said, 'No, I don't,' and I said, 'What did
9 you do with it?' and he said, 'I destroyed it.'

10 Of course, I did not need his duplicate
11 ballot because I had five to indicate that there was an
12 irregularity in the election, and, however, I asked him
13 if he was willing to sign a statement to that effect that
14 he had not voted, and he agreed to do it.

15 Q Did he oppose signing the statement?

16 A No.

17 Q And did you prepare a statement for him to sign?

18 A Yes.

19 Q And did you hear from any other pilots concerning how
20 they voted?

21 A I had one other pilot come in.

22 Q And who was that?

23 A Captain Floto.

24 Q And what did he say?

25 A He said that he had not voted in the election, and I

1 asked him if he had his duplicate ballot, and he said,
2 'No,' and I then asked him if he was willing to sign a
3 statement to the effect that he had not voted, and he
4 said that he would and so we composed a statement which
5 he signed.

6 Q Now, Mr. Winston, I show you Government's Exhibit
7 fifteen now in evidence, purporting to be a letter
8 from Washington Attorney's dated December 9th, 1974,
9 and I ask you the circumstances under which that letter
10 was mailed?

11 A My labor attorney mailed a letter to the Mediation Board
12 indicating that we had -- we had considered an irregularity
13 had existed in the election of the Teamsters, and that
14 we asked them to review this irregularity, that we had
15 at least seven of the eligible twenty-one employees
16 who were sent duplicate ballots, or affidavits.

17 Q Now, that letter refers to an affidavit, isn't that
18 correct?

19 A Yes.

20 Q Now, I show you Government's Exhibit sixteen now in
21 evidence, and ask you if that is the affidavit to which
22 the letters refer (Offering)?

23 A Yes, it does.

24 Q And finally I show you Government's Exhibit seventeen
25 and ask you if that is all part of this same exchange

1 of correspondence between your attorneys and the National
2 Mediation Board regarding what appeared to you to be
3 irregularities in the election?

4 A Yes, this is another piece of the correspondence which
5 I copied in. This is a letter from our labor attorney
6 to the National Mediation Board.

7 Q Now, finally I show you Defendant's Exhibit A-e, marked
8 for identification, and ask you if you can identify that
9 letter?

10 A Yes, I can.

11 Q And what is that, sir?

12 A That is a letter from our Washington Labor attorney to
13 the National Mediation Board naming the seven people.

14 Q And what seven people?

15 A Seven pilots who claim they had not voted in the election,
16 and as evidence of the possibility of an irregularity.

17 Q And what seven people are named in that letter?

18 A Excell, and we call him Hank Excell; R. Paul Floto;
19 then John Herrington, Mike Excell, Ely Pusztai, Jan
20 Solberg, and Douglas Ton.

21 MR. RICHARDS: I would like to move
22 Defendant's Exhibit A-e into evidence (Offering to Counsel).

23 MR. CHALENSKI: I believe that this is
24 already a Government Exhibit, the original letter. I
25 have no objection, in any event. However, I believe that

1 the original is already in evidence.

2 BY MR. RICHARDS:

3 Q I show you Government's Exhibit eighteen, and ask you
4 if that is the same letter to which you earlier
5 referred to (Offering)?

6 A Yes, this looks like an original of the letter that I
7 just read.

8 Q All right, thank you. Now, Mr. Winston, did there come
9 a time when Paul Sholl terminated from employment?

10 A Yes.

11 Q And do you recall when that was?

12 A Just a moment: He was terminated on December 8th, 1974.

13 Q And do you recall the circumstances under which that
14 termination came about?

15 A I would like to amend that: I think it should be
16 December 9th.

17 Q What is that?

18 A Well, it was one day later. I think December 8th was
19 a Sunday and this was Monday.

20 Q And do you recall the circumstances under which that
21 termination occurred?

22 A Yes, I do.

23 Q And would you relate them to the Court and the Jury?

24 A Pilot Solberg had arrived on a flight Friday evening,
25 December 6th, in which he telephoned the Director

1 of Maintenance, Al Warner, indicating that the snubber
2 handle of a Metro he was flying on was broke, and he
3 indicated that they were on a turn-around, which meant
4 that they had to pick up passengers and leave on an
5 immediate basis, and would somebody come out and replace
6 the snubber handle. Mr. Warner dispatched --

7 Q (Interrupting) No, you say Captain Solberg, and do you
8 mean Captain Kleitz?

9 A I am sorry, did I say -- no, this was co-pilot Sholl
10 who did the telephoning.

11 Q All right. And then what happened?

12 A Okay. Mr. Warner directed Maintenance and dispatched
13 our supervisor, Fred Maize, with a handle. We did not
14 have a spare handle so they had to unbolt a handle from
15 another aircraft which was grounded for Maintenance, any-
16 way, to get the airplane at the gate going, and Fred
17 Maize arrived at the airplane, removed the broken pieces
18 from the bulk head, or the side which supports the
19 snubber handle, and replaced it with a new snubber handle,
20 or the borrowed snubber handle.

21 After he was done, after Fred Maize was
22 done, he attempted to close the door and found that the
23 door would not close, that the door had been severely
24 damaged and was warped, and then he asked co-pilot
25 Sholl --

1 MR. CHALENSKI: (Interrupting) This is
2 all hearsay. If the witness would testify what was told
3 to him.

4 THE WITNESS: All right. This was
5 reported to me by Fred Maize thathe had asked co-pilot Sholl
6 what had happened here, that it was more broken than
7 just a handle, and that the whole door was actually
8 broken. Fred Maize reported to me that co-pilot Sholl
9 said that the door -- that the snubber had failed, and
10 because of that the door free fell, and Fred Maize then
11 related to me that he got on the telephone and called
12 Mr. Warner and said this unrepeatable word and used
13 rather strong words, that it was more than just a
14 snubber handle and that the door was twisted and warped,
15 and the plane was grounded as far as he was concerned.

16 BY MR. RICHARDS:

17 Q And did you receive these reports the same day of the
18 incident?

19 A Yes, I was in the main office at that time.

20 Q Now, did you subsequently inspect the snubber handle?

21 A I did.

22 Q And I show you Defendant's Exhibit 'P' and I think it
23 is marked for identification at this point, and I ask
24 you if this was the snubber handle that was damaged
25 (Offering)?

1 A This is the exact snubber handle that was removed from
2 the damaged aircraft.

3 MR. RICHARDS: I move Defendant's Exhibit
4 'P' into evidence.

5 MR. CHALENSKI: I have no objection.

6 THE CLERK: Received into evidence.

7 (Defendant's Exhibit 'P' for identification,
8 received in evidence.)

9 BY MR. RICHARDS:

10 Q Upon learning of the incident, did you have an
11 opportunity to talk to Paul Sholl?

12 A Yes. When he returned from his flight later that
13 evening I spoke to him directly and asked him what
14 had occurred.

15 Q And what did he say to you?

16 A He said that he opened the door of the Metro, that the
17 snubber system failed, which caused the door to fall,
18 and in falling it ripped the snubber handle off the
19 bulk head mounting.

20 Q Was there any mention of a guard chain?

21 A No.

22 Q What did you say to Sholl upon learning that?

23 A I didn't say anything more to him, other than, 'We
24 are evaluating the damage, the repairs necessary,' and
25 the airplane was obviously grounded and it will be

1 grounded for some time, and I guess that was about it.

2 Q And did you further inspect the snubber handle with
3 Mr. Warner and anyone else?

4 A Yes. With Mr. Warner, first, and we discussed the
5 breaking of this handle, and how this occurrence happened,
6 and I came to a conclusion.

7 Q And your conclusion was what?

8 MR. CHALENSKI: Your Honor, I object.
9 There is no showing that the witness is competent to
10 render a conclusion as to how the handle broke.

11 THE COURT: What?

12 MR. CHALENSKI: As to how the handle
13 broke.

14 THE COURT: Sustained.

15 MR. RICHARDS: Your Honor, I would --

16 THE COURT: (Interrupting) Sustained.

17 Next question.

18 BY MR. RICHARDS:

19 Q What happened?

20 A Mr. Warner and I came to a conclusion.

21 Q Did there come a time when you discussed the door handle
22 with any other person, or persons?

23 A Yes. I of course, discussed it with co-pilot Sholl
24 the day that he was discharged.

25 Q And did you discuss the incident with Captain Kleitz?

1 A Yes, I did.

2 Q And what did you say to Kleitz, and what did he say
3 to you?

4 A Kleitz came into my office the following Monday and said
5 that the door drop was an accident, and that the handle
6 was broken, the snubber handle was broken as a result
7 of the door falling, and that the snubber system had
8 failed. I told him that I felt it was not an accident,
9 that the dropping of the door was intentional, that the
10 snubber handle could not have broken as a result of the
11 way that door dropped.

12 Q And did you subsequently have a conference with Sholl?

13 A Yes.

14 Q And when did that take place?

15 A It took place the morning of Monday, which I think would
16 have been December 9th.

17 Q December 9th?

18 A I think it was. It was a Monday.

19 Q And what did you say to Sholl at this meeting?

20 A Okay, I asked him, again, to relate the circumstances
21 of the damage to the aircraft, and he indicated that
22 he came in, opened the door, and the door just fell
23 away from him and, in falling, the snubber handle was
24 ripped loose.

25 Q And what did Sholl say to you?

1 A That is what he said.

2 Q And what did you say to him?

3 A I indicated that I had spent a lot of time with myself
4 out with Ted Bell, studying the damaged aircraft, and
5 as a result of my findings I am discharging him.

6 Q Was there any further conversation between you and
7 Sholl?

8 A Yes.

9 Q And what was that?

10 A I told him the reason for my discharging him.

11 Q And what were those reasons?

12 A I said that he had been negligent in opening the door,
13 that ins-ructions for co-pilots were, by both our
14 operations people and the factory to hold onto the
15 chains, the door chains while lowering the door to make
16 sure that the snubber took effect before releasing that,
17 and the proper procedure would have been to follow the
18 chains down, even though the snubber had taken effect.

19 So he had been negligent in not following
20 those procedures and created a lot of damage.

21 In addition, he had exercised his duties
22 dangerously when he failed to report that the door had
23 free fallen.

24 Q And why did you consider that a dangerous element is
25 this?

1 A Because a free falling door would be severely damaged.
2 Now, this door is different from doors in other airplanes.
3 Now, this door is what we call a structural door. It is
4 like part of a bridge. If you damage the center part
5 of the bridge, the whole bridge is not safe. Now, other
6 doors on other aircrafts are not built that way. You
7 can remove the doors and fly the airplanes safely.

8 Q Did you tell Sholl anything else at that conference?

9 A Yes. In addition, to telling him that he had exercised
10 his duties dangerously, I felt that he was incompetent
11 not to have realized that when this door had fallen that
12 the airplane would have been damaged, and he was prepared
13 to board passengers and had this airplane -- well, had
14 that door been able to close, when Fred Maize went and
15 closed that door, had it been able to close that airplane
16 would have taken off in a dangerous condition, and the
17 lives of everybody on the airplane would have been in
18 danger.

19 Q And did Sholl make any response to this statement by
20 you?

21 A Yes. He said if I would not discharge him, he would be
22 willing to pay for the damages.

23 Q And did he say anything else?

24 A I don't believe so.

25 Q Did you subsequently turn this matter over to a Federal

1 Agency?

2 A Yes. I called -- I immediately called the F.B.I.,
3 and indicated to them that we had a situation of
4 sabotage, and I would like them to investigate it.

5 Q And did you subsequently meet with the F.B.I.?

6 A Yes.

7 Q And did you report all of the details and circumstances
8 that you had learned?

9 A Yes, I did.

10 Q And did you thereafter ever hear from the F.B.I.?

11 A No -- well, I would say the immediate period, that is
12 perhaps for a year, no.

13 Q Okay. Within the next year you didn't hear?

14 A No.

15 Q And did you report this incident to any other Federal
16 Agency?

17 A Yes. Immediately after the occurrence and on the first
18 inspection of the door damage, I reported it to the
19 F.A.A.

20 Q And did there come a time when representatives of that
21 agency inspected the door?

22 A Well, to back up a bit: when I reported this to the
23 F.A.A., I indicated that I had also reported the
24 incident to the F.B.I., and so the F.A.A. took no
25 action. In April of 1975, I, upon an inspection that I

1 have had in our operations, I asked the F.A.A. to
2 investigate this door drop incident, and if they agreed
3 with me, I would like to file a violation against
4 co-pilot Sholl.

5 Q And at the time that you talked to these representatives,
6 did you show them Defendant's Exhibit P?

7 A Yes.

8 Q And did they, in your presence, come to any conclusion
9 as to what happened to the door?

10 A They came to the --

11 MR. CHALENSKI: Objection, as to hearsay.

12 THE COURT: Sustained.

13 BY MR. RICHARDS:

14 Q At the time that you discussed this with the F.A.A. did
15 you report all of the circumstances surrounding how
16 Sholl indicated that the door had free fallen?

17 A Yes, I did.

18 Q And following that conference with the F.A.A. did you
19 receive a copy of a letter from the F.A.A. dated April
20 30th, Defendant Exhibit N, now in evidence (Offering)?

21 A Yes, I did receive a copy of this letter.

22 Q Now, Mr. Winston, did you, at my request, make certain
23 slides of this door, the snubber handle and the snubber?

24 A Yes, I did.

25 Q And what do these slides consist of?

1 A These slides consist of a series of photographs
 2 showing a sequence of how the doors open normally,
 3 and we then remove the chains, that is when I say we,
 4 I mean our Director of Maintenance and myself --

5 Q Is that Art Warner or Al Warner?

6 A That is Art Warner. We removed the supporting chains
 7 and the snubber chains to exemplify that it was
 8 impossible to put a stress to take the snubber handle
 9 with a door drop, and thereby damaging in any way that
 10 snubber handle.

11 Q Now, are these slides in the Courtroom today?

12 A Yes.

13 MR. RICHARDS: At this time I would ask
 14 the witness to show those slides to the Court and the
 15 Jury?

16 THE COURT: Yes.

17 MR. CHALENSKI: I object to them as being
 18 totally irrelevant. There is no showing that the
 19 conditions that are to be exhibited in the slides are
 20 duplicates --

21 THE COURT: (Interrupting) I have to
 22 see the slides. I don't know. You have got to lay the
 23 appropriate foundation.

24 (The Defendant, Mr. Winston, set up a
 25 slide projector in the Courtroom, within a viewing area

1 of the Court and the Jury, and the following proceedings
2 occurred.)

3 THE WITNESS: This first slide is the
4 Metro, and the Metro main door openings and these are
5 the steps that are allowed to descend so as to allow
6 passengers to enter the cabin of the aircraft. We
7 have the door in a one-third open position, as it is
8 being lowered.

9 Now, you will notice that there are
10 support chains around, or various chains. There is
11 a chain attached to the stairs at this point (Indicating),
12 which is the main support chain, and another chain which
13 is supported here, at this point (Indicating), which is
14 the other end of the support chain. There are two chains
15 on each side of the door.

16 MR. RICHARDS: Why don't you stand over
17 there (Indicating).

18 THE COURT: Yes, get on this side.

19 THE WITNESS: Yes, sir. In the corner,
20 you can see the snubber chain as the --

21 THE COURT: (Interrupting) I am sorry,
22 but I don't think the Jury can see what he is doing.
23 Set it up so that the Jury can see it better.

24 (Whereupon, the projector and screen were
25 set up in a more advantageous position for the Jury to

1 view.)

2 THE WITNESS: So in this corner you can
3 see -- this is a snubber chain as it attaches to this
4 part of the door.

5 You can see it a little more clearly in
6 other slides.

7 Now, here is the door almost all of the
8 way opened, and again, you can see the support chains
9 and the main support chain comes down here and this is
10 a spacer, and it is a bar meant to keep the chain away
11 from the steps, to give it adequate support.

12 Here again is the position that the main
13 support chain is attached to the steps. You can see a
14 little clearer how the snubber chain is in this corner,
15 and this is attached to the snubber chain to the door.

16 The next slide here is the door fully
17 extended. We measured the distance of the steps to the
18 ground, and it is approximately fourteen inches from the
19 ground, and the main support chain attaches to the
20 fuselage of the aircraft at this point, and it is a
21 relatively strong chain and comes down from there to
22 this point (Indicating), which is simply a bar that we
23 call a spacer and it keeps the chain away from the door,
24 and then attaches to the door at this point here.

25 This is what supports the door so that

1 when people walking up, this keeps the door from dropping
2 all of the way to the ground, and you have a duplicate
3 chain which attaches a little bit closer, and comes down
4 to the spacer bar, and gets attached to the door at this
5 point (Indicating), and that is the main support chain.

6 You can see more of the snubber, and
7 here is the snubber handle which is used as a grip by
8 passengers, should they be coming down. It is not used
9 by the pilot at all in opening the door.

10 The pilot hangs onto this handle here
11 which unlocks the door, and his other hand is on the
12 chain to keep it from dropping, while he is opening the
13 door.

14 The next slide: This is a view looking
15 toward the rear of the aircraft, that is from the front
16 to the rear, and it gives a better view of the main
17 support chain, and it is attached to the fuselage and
18 comes down to the spacer bar, and then attaches to the
19 steps at this point (Indicating).

20 The other points of the chain is here,
21 and comes up to the space bar, and attaches to the
22 fuselage of the aircraft, and you can still see the
23 snubber chain, all of it, but this part of it, and
24 again it attaches to the steps at this point.

25 The next slide: This is a view looking

1 forward of the aircraft from the rear to the front, and
2 I think it gives a clearer view of the attachment.

3 Here is the snubber handle, and attached
4 to this is the snubber, itself, and at this point, which
5 comes down to this part of the stairs. There is the
6 main chain that attaches to the fuselage and comes down
7 to these spacer bars which keeps the chain away from the
8 body of the aircraft, and then attaches down here to the
9 stairs.

10 BY MR. RICHARDS:

11 Q Is the chain attached to the snubber handle at all?

12 A No, the main support chain is not attached to the
13 snubber, as a separate chain is attached to this
14 different point on the stairs, and the other end is
15 attached at this point at the snubber handle.

16 Let me raise this slide a little.

17 Now, do-pilot Sholl contended that when
18 he unlocked the door, and this is the handle here --

19 MR. CHALENSKI: (Interrupting) I
20 object unless this is meant to be what he told him?

21 THE WITNESS: That is what he told me.

22 BY MR. RICHARDS:

23 Q That is what he is testifying to.

24 A He told me that when he unlocked this handle, and
25 dropped the door, this snubber system failed and allowed

1 the door to drop, rather than to gently descend. When
2 it did that, the force in the descent not only broke
3 the door, but also broke this handle. This is the
4 snubber handle, and you saw the pieces. It was broken,
5 and it was sheared into three pieces.

6 Now, we contend that --

7 Q What is your next slide?

8 A This is the next slide. This is a picture -- may I
9 back up -- in order for this handle to break, when this
10 door dropped --

11 MR. CHALENSKI: (Interrupting) I object
12 to the witness as not being qualified to testify what
13 is necessary for the handle to break.

14 MR. RICHARDS: Your Honor, this witness
15 is familiar with the aircraft and took training on the
16 aircraft, and he buys supplies for the aircraft. I
17 say that he is amply qualified.

18 THE COURT: I think that you are getting
19 into the field of metallurgy, and it has nothing to do
20 with the operations of buying and running it, or piloting
21 it. Your objection is sustained.

22 MR. RICHARDS: May we make an offer of
23 proof as to what the slides would show concerning --

24 THE COURT: (Interrupting) The slides
25 are visible, and they show what they show.

1 BY MR. RICHARDS:

2 Q Would you proceed to merely show the slides?

3 A Yes. The next slide, this is a picture of the broken
4 handle in three pieces, and this part was so attached
5 to the bulk head, as you saw in the previous picture,
6 and this is the broken handle here, and this is the
7 other part still attached to the bulk head. This is
8 a picture of what the handle looks like normally, and
9 we have brought a handle here to show what one actually
10 looks like.

11 The next slide: Here the steps are open,
12 and as you can see, we put a large stick along side,
13 this is a yardstick and it is touching the ground and
14 it indicates that the step in a fully open position, with
15 someone on the step, is fourteen inches from the ground.

16 The next slide: Here we then proceeded
17 to unhook the main support chains, and place the main
18 support chains so that they were resting on the stairs,
19 and that permitted the door to descend to the ground,
20 actually touching the ground.

21 The snubber handle and the snubber chain
22 is still in place, and not unhooked. The snubber system
23 at all, just unhooked the main support chain so that
24 there was nothing supporting the door, and the chain
25 was permitted to expand to allow the door to settle to the

1 ground.

2 Next slide: Here is a picture showing
3 the main support chain unhooked, with the door touching
4 the ground. The next slide: This is one of the same
5 position using a yardstick to guide us that there was
6 zero clearance between the floor and the base of the
7 door.

8 Next slide: The same picture of the doors.
9 The only difference in this picture is that what we have
10 done is we have tied a string at the snubber attachment
11 point, to the snubber handle, and then attached the other
12 end of this string, or tied this string to the attachment
13 point of the snubber at this point, and drawn this
14 string taut, and with the door fully opened, the string
15 is now taut, which shows that the amount of --

16 Q (Interrupting) The string is fully taut?

17 A Yes.

18 The next slide: At this point with the
19 main chains unhooked, we also unhooked this snubber
20 system, and left the string in place.

21 The next slide: Another view of the same
22 thing and the string in place, and the door is still
23 touching the ground, and the string is attached to the
24 snubber handle in a taut position, and it is attached
25 to the snubber attachment at this point of the door.

1 Next Slide: There we have here the
2 distance from the bulk head here, right here, and then
3 the next slide: you can see that with the string taut
4 it is approximately two inches from the bulk head.

5 The next slide: Now, we have rehooked
6 the main chains, which lift the door from this point
7 resting on the floor, to fourteen inches above the
8 ground, and the main support chains are back in place,
9 and as you see, in raising the door, the string becomes
10 slack. We did not touch the string at this point or
11 any point from now on.

12 The next slide: We are measuring the
13 string to see the slack position.

14 The next slide: And the string is
15 approximately seven inches now, and previously with the
16 door all of the way down and taut, it was two inches from
17 the bulk head, and this is the bulk head, and this
18 brown siding and it is now approximately seven inches,
19 and that is to a full stretch.

20 Let me go back again and you can see the
21 support chains hooked up. The snubber is unhooked, and
22 the main support chain on this side is hooked up.

23 The next slide: This is another view
24 of the same thing, and just showing the slack.

25 The next slide -- well, what we have done,

1 we unhooked the main chain, and we are attempting to
2 build up the distance from the floor under the steps so
3 that it is fourteen inches from the ground, with a
4 soft spongy material, and at that point we have built it
5 up to the approximate distance from the floor to the base
6 of the door, with this spongy soft material.

7 What we plan to do is drop the door, and
8 we don't want to damage it, and when we dropped it it
9 will hit the spongy material and not damage the door.

10 The main support chains are still unhooked.

11 Next slide: At this point we are proceeding
12 to close the door in order to try this door-dropping
13 exercise. As you can see, the mechanic is inside of the
14 aircraft, and he is lifting the door with one hand.

15 Next slide: The door is now fully closed
16 at which time we released the door and let it fall.

17 Next slide: And when it fell it hit the
18 spongy material and it did not damage the door, and it
19 did not hit and stop by the chains, which it did in
20 the initial incident, and when it hit the sponge it
21 stopped, but it dropped to exactly fourteen inches off
22 the floor, and the string did not even break.

23 Q And what about the handle?

24 A The handle was, of course, in its natural position.

25 There was no force put on that handle to tear it apart,

1 not even enough force to tear the string.

2 Q Is that it?

3 A Yes, I think that that gives you the picture.

4 (Whereupon, the slide presentation was
5 concluded and the witness returned to the witness stand.)

6 BY MR. RICHARDS:

7 Q Mr. Winston, did there come a time when William Lamos
8 was terminated from employment?

9 A Yes.

10 Q And would you relate to us the circumstances surrounding
11 his discharge from the company?

12 A I was in a meeting with the F.B.I. when the office
13 manager came into my office and said to me that I must
14 come out of the office, that there is quite a problem in
15 the operations part of the office, and she would like
16 me to come out. I said I was sorry, but I did not want
17 to be interrupted, and see if you can handle it yourself

18 Q And who is that?

19 A Mary Persons.

20 Q And she testified here last week?

21 A Yes, she did.

22 Q But she insisted that it was an uncontrollable
23 situation, and that I must come out. I excused myself
24 and went out, at which time I spoke to Mrs. Winston and
25 asked her what the problem was and she indicated to

1 me that Captain Lamos had just come in from a flight,
2 and his airplane was a large aircraft, the Metro which
3 was scheduled for another flight, and that the only
4 aircraft available was a Dumont, which had just come out
5 of our shop, and that since there were no other Captains
6 available, that Captain Lamos was asked to check fly --
7 to check the aircraft out, in a flight test, before
8 boarding any passengers and continuing on to Elmira.

9 Q Were there any company rules in effect at this time as
10 to what aircraft should be test flown after maintenance?

11 A Yes, we had company rules that under certain maintenance
12 conditions aircraft would be test flown before boarding
13 passengers.

14 Q What happened after that? When you learned about the
15 circumstances of the Lamos refusal?

16 A I went over to Captain Lamos and asked him what his
17 problem was, and he said he was late for a flight, and
18 he was not going to test fly this airplane, that he
19 didn't see any reason why he couldn't take the aircraft
20 he was in, and continue on to Elmira. I then said that
21 we needed the aircraft for another flight, and we didn't
22 have another aircraft available, except the one that had
23 just come out of the shop. It must be test flown before
24 we carry passengers, and since he was the only Captain
25 available, that we wanted him to do that. And I said

2 to Washington and back to Binghamton, and you sell them.
1 that I did not expect to see a scene such as I had with
2 our scheduling girls, that they were there to do their
3 job, and he had been harassing these girls for three
4 weeks, and I had taken the position of Hands-Off because
5 I felt that the girls were quite capable and competent
6 in handling things, but I was not about to tolerate
7 any more. So he replied, 'Then you are firing me.'

8 Q And what did you say?

9 A No, I said I am not firing you, but what I am telling
10 you is that you have been hired to fly airplanes, not
11 to tell us how to run our business. And so he replied,
12 'Then you are firing me.' So, I said, 'If you want to
13 be fired, I am going to accommodate you. You are fired.'

14 Q And did that terminate the conversation with Lamos?

15 A Yes, that terminated my conversation.

16 Q And did he subsequently come into the office?

17 A A few days later he came into the office, and I was not
18 present --

19 Q (Interrupting) You weren't present?

20 A No.

21 Q And is that the last that you heard from Captain Lamos?

22 A Yes.

23 Q Now, did there come a time when Ronald Williams was
24 terminated by the company?

25 A Yes.

1 Q And do you recall the date of his termination?

2 A I think it was -- just a minute -- the record indicates
3 that he was discharged January 19th , 1975.

4 Q '74 or '75?

5 A 1975; January 19th, 1975.

6 Q 1974 or 1975?

7 A I am sorry, I am pretty sure I am correct when I say
8 1975.

9 Q Okay. January 19th?

10 A Yes.

11 Q Would you relate to me the circumstances surrounding his
12 termination from employment -- I will withdraw that
13 question.

14 Mr. Winston, was Ronald Williams one of
15 the co-pilots considered in your earlier conference with
16 Bell, when you were doing the cutback, resulting in the
17 termination of Slough and Josephson?

18 A Yes, he was one of the co-pilots that I considered in
19 the initial cutback.

20 Q And why wasn't Williams terminated at the same time as
21 Slough and Josephson had been terminated?

22 A Ted Bell interceded for him and indicated that he had
23 been with us for some time, and we should give him
24 every opportunity to make Captain, and asked for more
25 time. He said that he had made arrangements to procure

1 an aircraft so that Ronnie Williams can continue his
2 training and get his Air Transport Rating.

3 Q Okay. Now, did you have any conference with Bell before--
4 did you have another conference with Bell before
5 terminating his employment?

6 A Yes, just prior to termination, which was approximately
7 two months later, I asked Ted Bell what progress had
8 Ronnie Williams made toward getting his A.T.R. Ted
9 Bell reported that he had made no progress on it.

10 Q There has been a reference to an October 1973 meeting
11 between management and the co-pilots. Were you present
12 at that meeting?

13 A At the October 5th meeting?

14 Q No, October of 1973?

15 A Yes, 1973.

16 Q Between management and the co-pilots?

17 A Yes, I was present at that meeting.

18 Q And do you recall what was discussed at that meeting?

19 A Yes, I do.

20 Q And what was discussed?

21 A A schedule of salary increases requested by the co-pilots
22 to take effect on hiring -- upon hiring and then
23 additional raises for each subsequent year for up until
24 the third year, at which time it was agreed that the co-
25 pilots would get his Air Transport Rating, or could be

1 asked to leave.

2 Q Now, was Ronald Williams present at that meeting?

3 A Yes, he was.

4 Q And did he agree to those terms at that time?

5 A Yes, he did agree to those terms, and I would like to
6 add one more point to the agreement. It was that not
7 only were they to get their Air Transport Rating, but
8 they must qualify as a Captain of our company or go
9 some where else.

10 Q Now, I gather from your testimony that just before
11 Williams was discharged you had another conference
12 with Ted Bell to review his progress with the company,
13 is that correct?

14 A Yes, primarily the consensus was: did he get his A.T.R.

15 Q And what did you learn at that time?

16 A I learned that he had not only not gotten his A.T.R.,
17 but had made no attempt to get his A.T.R.

18 Q And was anything further discussed at that conference
19 regarding Williams' performance?

20 A Not regarding his performance.

21 Q I am sorry?

22 A I don't believe that there was anything more regarding
23 his performance. We had discussed, prior to that, the
24 incident of the run in with the president of the New
25 York State Electric and Gas.

1 Q In other words your evaluation of Williams, as to
2 whether or not he should be terminated, actually
3 took place at that earlier conference with both Slough
4 and Josephson present?

5 A Yes.

6 Q And let's go back to that earlier conference, and I
7 ask you what factors did you take in account at that
8 time, regarding Williams' performance?

9 A Well, co-pilot Williams had a very harsh repore with
10 passengers. I had an incident with him back about
11 1968 at which I fired him because he had been mishandling
12 passengers repeatedly.

13 Q Do you know for what period of time he was away from the
14 company?

15 A He was away from the company for approximately four
16 months, and he asked Ted Bell to be reinstated, and
17 I was reluctant to do this. My policy is to try and
18 work with the people that are supervisors, and I try
19 to meet them more than halfway. So Ted Bell interceded
20 for Ronnie Williams, and asked that he come back, at
21 least on a part time basis, which I agreed to.

22 Q Did you ever have occasion to speak with Williams
23 regarding his relationship with customers?

24 A Yes, I did.

25 Q Can you give us an approximate time, and how many times

1 you spoke to him?

2 A I would say that there were half a dozen occasions
3 during the period from when he came back with us, to
4 the time we dismissed him again.

5 Q Now, when did he come back with you?

6 A He came back on a full time basis on October, 1970.

7 Q Is that 1970?

8 A Yes.

9 Q And the five or six times that you spoke to him on
10 customer relations, took place between then and the
11 date of his termination?

12 A Yes.

13 Q And primarily what did you say to him regarding customer
14 relations?

15 A I indicated that I had discharged him once for being
16 so harsh with passengers, that I cautioned him to
17 control himself, and that was pretty much in essence
18 all of the times that I remember reprimanding him.

19 Q Did he have anything to say, himself, after these
20 conferences?

21 A Well, his evaluation was that he wasn't so harsh.

22 Q Were there any other factors considered by you and
23 Bell at the time of the evaluation session?

24 A Yes, we considered the fact that he had been delinquent
25 in his record keeping, bookkeeping, and that he had been

1 reprimanded by the F.A.A. -- we had been reprimanded by
2 the F.A.A., and the I.B.M. inspection team for sloppy
3 bookkeeping, and keeping required records.

4 Q And would you be more specific as to what his duties
5 were concerning or regarding bookkeeping?

6 A Well, primarily, each pilot is required to keep a record
7 of their flights, duty time, and information of that type
8 so that they would be available for F.A.A. inspection,
9 and also for the I.B.M. inspection team.

10 Q And you found that Williams was not maintaining his
11 records or keeping them up?

12 A That is right. We were criticized by both the F.A.A.
13 and the I.B.M. team.

14 Q Were there any other factors that you took into
15 account at the time of this decision?

16 A Well, I mentioned the run in with the president of
17 New York State Electric and Gas. He reported frequently
18 late for duty, and as a result, Ted Bell reported to
19 me that the steps that he took was to not schedule him
20 for morning flights.

21 Q And what was the reason for that?

22 A Because he was late for duty.

23 Q And Williams testified that he became a co-ordinator
24 dispatcher in early September of 1974, is that correct?

25 A That is correct.

1 Q And did he perform those duties adequately?

2 A Those duties how?

3 Q Did he perform the duties of a co-ordinator-dispatcher
4 adequately?

5 A Not to my satisfaction.

6 Q And in what way were you dissatisfied with his
7 performance?

8 A It takes a special technique to know how to dispatch
9 aircraft so that there is an economic co-ordination
10 on matching of flights and passengers. And I would say
11 that he was not doing this efficiently, and it was
12 costly.

13 Q All right. Anything else discussed by you and Bell
14 regarding Williams?

15 A Yes. Relative to those duties, I complained to Ted
16 Bell that -- well, relative to the co-ordinating duties,
17 I complained to Ted Bell that he was not -- Co-pilot
18 Williams was not flying, and didn't seem to be interested
19 in flying, and I felt that he should be flying and I
20 insisted that Ted Bell remove him from the co-ordinating
21 duties. I didn't feel it was necessary, and to put
22 him back on flight status only.

23 Q And when you put him back on flight status, had you made
24 any decision as to whether or not you were going to
25 terminate his services?

1 A Well, I had made this decision for terminating his
2 services prior to the time that we had terminated,
3 on October 3rd, two other co-pilots. However, he was
4 in the interim period between his trying to get his
5 A.T.R. rating locally in the Binghamton area.

6 Q And were there any other factors concerning Williams'
7 employment which was considered by you and Bell?

8 A Well, we had some money keeping -- some missing money
9 problems. I don't want you to think that necessarily
10 because the money was missing it was a theft. It could
11 have been poor handling of the money, and forgetting
12 to take the money from the passengers, or something to
13 that effect, and we had some problems -- it was a factor

14 Q All right.

15 A One of the most important factors that I considered
16 was that he was not a good pilot, he did not like to
17 fly, and although I was willing to go along with Ted
18 Bell's request to allow him the training to become a
19 captain, it was my feeling that I personally was going
20 to flight check him to see if he was really a capable
21 pilot.

22 Q And of course, you never had the opportunity to flight
23 check him, did you?

24 A No, he never pursued his training, nor did he ever get
25 his air Transport Rating.

1 Q And did there come a time when Williams came into the
2 office to talk about his discharge?

3 A Yes.

4 Q And do you recall the approximate date of that conference?

5 A I believe that it was the date of his discharge.

6 Q All right, which would have been the 19th of January?

7 A Yes.

8 Q Of 1975?

9 A Yes.

10 Q And would you tell us what he said, and what you said?

11 A Yes. I indicated that he had not gotten his Air Transport
12 Rating, and that we are in the process of a cutback, and
13 because of the fact that he had been here longer than
14 three years, and that he apparently was not interested
15 in getting his Air Transport Rating, that we were
16 selecting him as one of the people that we were cutting
17 back on.

18 Q After you told him this, what did he say?

19 A He said that I was making a big mistake, that he was the
20 best friend I had in the company.

21 Q And did he say anything else?

22 A Not that I can remember at this moment.

23 Q Was there anything else that you said to him at the
24 time of his discharge?

25 A I don't believe so.

1 Q All right. Now, Mr. Winston, did there come a time when
2 two pilots by the name of Hummell and Larimore were
3 discharged by the company?

4 A Yes, sir, they were.

5 Q And first let's consider the pilot Hummell: Do you recall
6 the date when he was let go by the company?

7 A This indicates February 19th, 1975.

8 Q Now, what were the circumstances surrounding his
9 discharge?

10 A All right. We were in our last stage of our cutback.
11 We had decided that we were going to cutback to seven
12 co-pilots, keeping our captain staff intact, and he
13 was selected as one of the last co-pilots.

14 Q Now, you earlier testified to the conference with Bell
15 regarding the overall cutback in various departments
16 of the company. Did you have any further conferences
17 with Bell regarding cutbacks in the pilot division?

18 A Yes, we had another conference on Hummell about a week
19 earlier. That is not on Hummell but on everybody.
20 It was a re-evaluation.

21 THE COURT: I think that we have run
22 into our lunch hour here. We will follow the same
23 pattern and take a half hour luncheon, and recess
24 early in the afternoon.

25 (Whereupon the Jury was excused.)

1 THE CLERK: Court stands in recess
2 until 1:45 p.m.

3 (Whereupon, the proceedings were
4 recessed at 1:15 p.m., until 1:45 p.m., at which time
5 the following took place before the Court and the
6 Jury.)
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AFTERNOON SESSION

THE COURT: Good afternoon. Proceed.

BY MR. RICHARDS:

Q Mr. Winston, at the time that pilot Sholl was discharged, did you have any knowledge as to his interest in the unions or his attendance at the meetings?

A None whatsoever.

Q And at the time Lamos was discharged, did you have any knowledge as to his interest or support of the union?

A No, no knowledge at all.

Q Now, I would ask you the same questions concerning Ronald Williams.

A No, I had no knowledge of any union activity or interest.

Q Now, before the recess, you were discussing those factors taken into account regarding Hummell's discharge. Would you review those for the Court and the Jury, please.

A We had decided to finalize our layoff period, that is to bring our co-pilots back to the seven staff that we had originally decided. Hummell was still on probation, and there was a question of evaluating him versus other pilots. One of the influences parts that I considered was the fact that he would not buy a uniform, or it was reported to me that he would not buy a uniform because he intended to leave. I felt that there was no point in laying off a co-pilot who would stay, and keep a

co-pilot who intended to leave.

Q What was the company policy concerning uniforms?

A The company policy was for all pilots, they furnished their own uniforms. The company furnished the wings and the hat emblem. We required that for all pilots that were on the Metro, primarily, our larger aircraft, that we felt it was a must, and the other we preferred that they have them.

Q Was there any requirement as to how soon a new pilot should buy a uniform?

A I would say that we had no regid policy on that.

Q Okay. Now, in addition to the uniform matter, were there any other factors that you took into account concerning Hummell?

A Yes, we considered incidents of non-availability, lateness for counter duties, and we had a problem on missing money.

Now, this situation was a little different from missing money such as in the case of other co-pilots that I have discussed previously. This was a case where we felt that money had been taken with intent to keep it, and it seemed to be a pattern of this, during this period.

Q Would you explain the circumstances surrcunding this?

A Okay. A ticket is sold by the co-pilot to a passenger.

1 Let us assume that the passenger is going from Binghamton
2 to Washington and back to Binghamton, and you sell them
3 a round-trip ticket. It consists of five parts: the
4 back part is the passenger receipt, which he keeps for
5 his own purposes. The next two parts I call flight
6 coupons, or this is the part of the ticket that he
7 uses to get on board the aircraft. The same as when you
8 go into a theater, you buy a ticket and you get that and
9 hand it to the doorman, who then allows you to enter the
10 theater. That is what our flight coupons do. We have
11 flight coupons one and two, which is permission in effect,
12 to get on the aircraft.

13 Then we have auditor coupons, which we
14 use for accounting purposes. We also have what is
15 known as an 'Agent's Coupon' and in the case of billing
16 it is used as a receipt, as when we send the bill we
17 send that along with it as evidence that this ticket
18 was purchased, and when it was purchased, and so on.

19 We had a group of tickets that were
20 reported missing by our accounting department; no
21 record. We keep control by numbers and every ticket
22 is numbered, and we sell them in sequences, and we
23 were getting tickets that were turn ups and missing,
24 and no accounting.

25 And so this is then put on alert in our

1 accounting department to see if, by chance, the ticket
2 had been mislaid, or if it could be accounted for at
3 all, and we were on the alert to look for it.

4 When a passenger gets on the flight, the
5 co-pilot takes his ticket, and attaches it to what we
6 call a manifest, which is a list of all of the passengers
7 that get on the plane, and we write the ticket number
8 alongside of the passenger, which then tells us which
9 passengers are on the flight.

10 Now, we do it for accounting purposes,
11 and we do it also for legal purposes. We are required
12 by law to have an accounting of all passengers that are
13 on the aircraft.

14 So when these tickets are sold, they
15 are normally put into an envelope, the auditors coupon
16 is put into an envelope along with the cash and is
17 turned in to accounting, who then accounts for the numbers
18 in sequence, and every number must be accounted for,
19 and the amount of the cash is supposed to correspond
20 with the amount of the tickets sold.

21 So if we had a flight to Washington and
22 back, it would be a full round trip ticket, and two
23 portions for the passenger; one to get on the flight
24 in Binghamton and then he gets the other ticket when
25 he presents it when he gets on the flight in Washington.

1 Accounting reported that these tickets
2 were missing. In this case, there were five tickets
3 missing in a sequence, and we then discovered that these
4 tickets had been sold, because when the passengers came
5 on the return portion, he had his flight coupon to get
6 on that plane, and that flight coupon was attached to
7 the manifest, which in turn is turned over to bookkeeping.
8 Bookkeeping matches up these tickets so that when we
9 file it, it is filed as a batch, and all parts of all
10 of the -- well, essentially there are three parts of
11 the same ticket and they are matched together and the
12 auditors coupon, and the two flight coupons are matched
13 together and filed away, numerically.

14 Well, here was the flight coupon which
15 showed up. There was no auditors coupon, and not the
16 original flight coupon. We were then able to account
17 for the ticket. The ticket, in this case, was a cash
18 ticket, and was missing. So we had five such tickets.

19 Now, in the case of --

20 Q (Interrupting) Let me ask you this: Were you then
21 able to relate the missing tickets to the co-pilot who
22 was responsible?

23 A Yes, because we can tell from the ticket when it was
24 sold, and in what sequence it belonged, and who made
25 out the ticket, and what flight it was for, and who

1 were the pilots on that flight.

2 So we were able to get right down to the
3 co-pilot, and he is responsible for the accounting of the
4 tickets and the money.

5 We subsequently, because we had in this
6 period a minimum of thirty-five tickets which disappeared
7 under the same circumstances, we turned it over to the
8 New York State Police for investigation.

9 Q All right. In addition to the missing ticket incident,
10 were there any other factors considered by you?

11 A Yes. He was late for counter duties, and his attitude
12 was -- I have it written down as a terrible attitude.
13 He was non-cooperative, and arguing with the office
14 staff.

15 Q Now, did you have a conference with Hummell to discuss
16 his discharge?

17 A Yes.

18 Q All right. And was this on or about the time that he
19 left your employment, and do you have any record as to
20 the date that you talked to him about this?

21 A Yes, it was the date of his discharge.

22 Q And do you recall what date that was?

23 A February 19th.

24 Q Now, what did you say to him, and what did he say to you
25 at this time?

1 A I indicated that we were discharging him, that we felt
2 he was not going to stay with the company anyway, and
3 that we were having a problem with his attitude, he is
4 on probation, and we are in a cutback, and he was
5 selected in the cutback.

6 Q What did Hummell say to you?

7 A He said that, 'You are discharging me for union
8 activities, and I will get you.'

9 Q Did he say anything else?

10 A No.

11 Q Did you have any knowledge as to his interest or loyalty
12 to the union?

13 A No knowledge whatsoever.

14 Q All right. Larimore was discharged on or about the
15 same time, is that correct?

16 A Yes, two days earlier.

17 Q I would ask you what circumstances you considered in
18 terminating his employment?

19 A Well, in evaluation of course, he was on probation.
20 We had --

21 Q (Interrupting) Excuse me, Mr. Winston, but let me ask
22 you this: At this time had you previously considered
23 terminating two co-pilots at this phase of the cutback?

24 A At this phase of the cutback we were considering
25 terminating two co-pilots, yes.

1 Q And this was just a question of evaluating the co-pilots,
2 and determining which ones would go?

3 A Yes.

4 Q And let me ask you on Hummell: When did you make up
5 your mind that Hummell would be discharged?

6 A I would say the latter part of the previous week.

7 Q All right. And what about Larimore?

8 A The same time.

9 Q Now, what factors did you consider regarding Mr. Larimore's
10 termination?

11 A Well, we had some missing money incidents with him. We
12 had three tickets which were in question. One ticket
13 was a cash sale of \$92.00: another ticket was for a
14 cash sale of \$31.00, and another ticket here was for a
15 cash sale of \$31.00.

16 The first two tickets I mentioned, the
17 \$31.00 ticket and the \$92.00 ticket, were similar --
18 it was part of the same pattern. These tickets also
19 were turned over to the New York State Police for
20 investigation.

21 A third ticket was a little different.

22 Q And in what respect?

23 A Well, this ticket was not sold by co-pilot Larimore,
24 it was sold at our ticket counter in White Plains,
25 and was sold to an I.B.M. employee, a Mr. Ritkin, on

1 February 3rd, for a flight on February 4th, and although
2 the ticket was sold in White Plains, the flight was
3 to originate at Binghamton, and it was to take the
4 passenger from Binghamton, I believe, to LaGuardia.
5 The White Plains operation turned the envelope with the
6 money in and the coupon over to -- to co-pilot Larimore.
7 He was the co-pilot of the very next flight leaving
8 White Plains, flight 751, on February 3rd. There was
9 no money or ticket, or envelope, which it is supposed
10 to be enclosed in, and it was not turned over --

11 Q (Interrupting) How did you learn that the ticket was
12 sold?

13 A Well, okay. I was saying it was not turned in to
14 Binghamton, to our accounting department. The way we
15 learned it was sold, we got a refund claim by I.B.M.
16 asking for the money back. Well, it was reported as
17 a missing ticket.

18 Q Now, were there any other transactions concerning
19 Larimore's discharge?

20 A He also had an incident in which it was reported to me
21 by our head bookkeeper that he asked for access to our
22 payroll records.

23 Q And what was the company policy with regard to the
24 payroll records?

25 A Payroll records are a private matter, and it is not the

1 option of the employees to get access to payroll records.

2 Q Was there anything else?

3 A Prior to his scharge, we had an aircraft grounded
4 needlessly, which was written up by co-pilot Larimore
5 and I was personally involved in this flight. We were
6 short on aircraft that day. It was the only aircraft that
7 we had for a flight into the Boston area. The weather
8 was very severe. I was assigned to the flight as
9 captain. It was a one-pilot operation, and because the
10 aircraft had been written up, as some of the electric
11 equipment was not operating, the aircraft could not be
12 flown into that area. Our mechanics got on it and found
13 that the ground check was okay. I had a need for a
14 flight over to Elmira, and I took that airplane and
15 flew to Elmira, and checked the electrical equipment in
16 question, and found that they were okay. As a result
17 of that, we were able to take the flight into the Boston
18 area, rather than cancel it because of lack of aircraft.

19 Q How was Larimore connected with that?

20 A He wrote up the electronics on the aircraft.

21 Q I see. Was there anything else considered by you?

22 A Well, I felt that his attitude was bad. I felt that
23 anybody with an attitude such as he had should not
24 remain with the company. I am specifically referring
25 to the time, as it was reported to me, that he publicly

1 stated, 'I hope that little son of a bitch gets what
2 is coming to him,' and this was in a discussion --

3 Q (Interrupting) Was that reported back to you?

4 A Yes.

5 Q And you learned about that before this discharge?

6 A Yes.

7 Q And anything else that you considered?

8 A I think that that was essentially it.

9 Q Did you have a conference with Larimore in connection
10 with his discharge?

11 A I can't recollect whether I did.

12 Q Now, did you have any knowledge as to Larimore's interest
13 or support of the union?

14 A No.

15 Q Did you have any knowledge as to his attendance at
16 union meetings?

17 A None whatsoever.

18 Q And I ask you the same question concerning Jim Hummell:
19 Do you have any knowledge?

20 A No knowledge whatsoever.

21 Q Now, at my request, did you prepare certain graphs
22 concerning employee turnover, over the last few years?

23 A Yes, I did (Offering).

24 THE CLERK: Defendant's A-f through

25 A-j.

(Various documents marked Defendant's exhibits A-f through A-j, for identification.)

BY MR. RICHARDS:

Q I show you Defendant's Exhibits marked for identification, and I ask you if you can identify this document?

A Yes, I can.

Q What does that represent?

A This is an analysis of all co-pilots who have worked for Commuter Airlines from 1970 through 1975.

Q And is that information pulled from the payroll records and other documents maintained by Commuter Airlines?

A Yes, it is.

Q And to the best of your knowledge does that document contain all pilots and also co-pilots employed by Commuter through that period?

A To the best of my knowledge, it does.

Q Now, I show you Defendant's Exhibit A-g, marked for identification, and I ask you if you could explain to me what that is (Offering)?

A This is a list covering the same period, showing which pilots left the company from the period 1970 through 1975, and whether or not they were discharged or whether they resigned.

Q And what is the source of your information as to whether they were discharged or resigned?

- 1 A This is from discussions and evaluations from Ted Bell.
- 2 Q Now, I show you Defendant Exhibit A-h, marked for
- 3 identification, and I ask you what that is (Offering)?
- 4 A This is an analysis done from those payroll records
- 5 to reflect the ratio of turnover of pilot employees
- 6 compared to the total of pilot employees. And what this --
- 7 Q (Interrupting) All right. And are these figures the
- 8 percentage of turn over to the total personnel, of
- 9 pilot personnel?
- 10 A Yes, percentage of turn over to the total of pilot
- 11 personnel.
- 12 Q Now, I show you Defendant's Exhibit A-j, marked for
- 13 identification, and ask you if you can tell me what that
- 14 is (Offering)?
- 15 A This is a graph gotten from the same table, of payroll
- 16 tables that we have prepared before which evaluates
- 17 the ratio of discharges to the total pilot employees.
- 18 This is discharges concerning all pilots, pilots who
- 19 were fired, compared to the total number of pilot
- 20 employees showing the year 1970 through 1975, and the
- 21 percentages that occurred as a result of that.
- 22 Q Okay. Now, let me ask you this: Defendant's Exhibit
- 23 A-j, marked for identification and Exhibit A-h, marked
- 24 for identification, are based upon the information
- 25 contained in these two earlier exhibits A-g and A-f?

1 A That is correct.

2 Q Now, finally, I show you Defendant's Exhibit A-j, marked
3 for identification, and ask you what that is (Offering)?

4 A This is the same exhibit that I just showed to the Court.

5 Q I am sorry. I show you Defendant's Exhibit A-i, marked
6 for identification, and ask you what those records are
7 (Offering)?

8 A This chart, or graph, is derived from the same payroll
9 records which shows a ratio of discharges to the total
10 pilot employee turn over; that is, it shows the number
11 that our pilots who are discharged, compared to the
12 total people who left the company in each year, and it
13 is a percentage ratio, showing the early years of 1970
14 and going through 1973, 1974, and 1975.

15 Q Now, again, the information upon which the graph is
16 based is contained within these two earlier exhibits?

17 A Yes, it is.

18 Q And that is exhibit A-g, and A-f?

19 A Yes.

20 MR. RICHARDS: I would like to move for
21 the introduction of the Defendant's Exhibits f, g, h,
22 i, and j, into evidence (Offering to Counsel).

23 All of these have an A before them.

24 MR. CHALENSKI: Your Honor, I object
25 to several of these. The first one I object to is

1 Exhibit A-f -- yes, the first one is A-f, and thereafter
2 there is A-g on the basis that the witness testified
3 that it was based upon a conversation which he had with
4 the Defendant Bell. He said that it was a matter of
5 corporate records, and the testimony is not in evidence.
6 I object to the following Exhibit A-h, and then A-i
7 because they are in part based upon that document, and
8 in addition, on those documents A-h and A-i on the
9 basis that they -- well, there is nothing in the record
10 that shows they relate only to the pilots and co-pilot
11 employees of the Defendant. It appears that because of
12 the numbers, they may include employees, in addition
13 to those.

14 THE COURT: What is your reasoning in
15 terms of some rule of evidence, that I could recognize,
16 rather than determining some argument?

17 MR. CHALENSKI: My reason on A-g is that
18 it is not competent evidence and not based on facts
19 in evidence.

20 THE COURT: Sustained.

21 MR. CHALENSKI: My objection to the
22 following three is that they are based on testimony
23 on A-g, so that they would fall for the same reason,
24 and secondly that they are not material and relevant,
25 and that they include employees other than those pilots

1 and co-pilots in issue.

2 THE COURT: As far as your first one,
3 it is sustained. On the second ground, I don't think
4 that it is valid.

5 MR. RICHARDS: Your Honor, Mr. Winston
6 testified that the basis of this information concerned
7 certain payroll records which the Government has
8 introduced into evidence.

9 THE COURT: But they are also based,
10 according to Counsel, on statements by Bell which are
11 not in evidence, and which would be hearsay at the
12 very best, and incompetent. To the extent that they
13 are based on that hearsay, they are incompetent.

14 BY MR. RICHARDS:

15 Q Now, Mr. Winston, did you increase your pilot staff at
16 any time during the fall of 1974?

17 A No.

18 Q Did you increase your pilot staff any time during 1975?

19 A No.

20 MR. RICHARDS: I have no further questions,
21 Your Honor.

22 MR. SHANAHAN: I have nothing.

23 THE COURT: Mr. Chalenski?

24 CROSS EXAMINATION

25 BY MR. CHALENSKI:

1 Q Mr. Winston, you have testified that you had a discussion
2 with the Defendant Bell during late September of 1974
3 in which you decided to layoff a certain number of
4 co-pilots, and you mentioned the figure seven. I just
5 want to ask what you meant by seven? Was it that you
6 were going to reduce it to seven, or layoff seven?

7 A Well, both.

8 Q You had fourteen co-pilots then to start with?

9 A Yes.

10 Q And you said that you were going to keep the captains
11 because the captains -- because you had invested money
12 in the captains, and that they had training, and other
13 investments of time and effort, is that correct?

14 A Partially.

15 Q Was there any other reason for keeping the captains?

16 A Yes, I explained that captains qualified captains for
17 our operation are difficult to find, and it takes a lot
18 of searching, and once we find one that we know is well
19 qualified for our operation, we want to hold onto them.

20 Q Now, under other circumstances, would you have reduced
21 both the captains and the co-pilots equally?

22 A I don't know what you mean by the 'other circumstances.'

23 Q How many captains did you have on at that time?

24 A I would estimate twelve -- fourteen -- probably twelve
25 including myself.

1 Q Did you have any knowledge of what percentage of your
2 flights that the captains flew alone?

3 A No, I don't have a percentage figure on that.

4 Q Well, can you give your best recollection?

5 A I know that most of my flights, I fly alone. I know
6 that the mail flights, the captains fly without the
7 co-pilots. There are some mail flights scheduled
8 every night.

9 Q And the balance of your flights, any time that you are
10 carrying passengers it is with a captain and a co-pilot?

A No, I didn't say that. I am sorry. I said that the
12 flights that I fly are mostly without co-pilots. There
13 are many flights which require no co-pilot.

14 Q Well, would you say that the four to five of your flights--
15 that four out of five of your flights of your corporation
16 were with a captain and a co-pilot?

17 A I wouldn't say that.

18 Q Less?

19 A No, I never did analyze it.

20 Q Mr. Winston, I hand you Government's Exhibit number
21 forty in evidence, and ask you if you have had an
22 opportunity to review that exhibit over the weekend?

23 A No, I haven't.

24 Q Have you had an opportunity to determine whether the
25 dates set forth on this Government Exhibit forty

1 covering employment and termination correspond with the
2 dates shown in your payroll records?

3 A I had an opportunity to look at some information that
4 you gave me, which I found many errors in.

5 Q Can you specify what information you found errors in,
6 and what the particular errors were?

7 A Possibly. I was given a set of documents which I don't
8 know if I have retained, which you offered to my attorney
9 to ask for corroboration, and I looked at those and
10 found that they were a high percentage of errors.

11 Q Which particular documents, Mr. Winston.

12 A If you show me, I would know what I have been looking at.

13 Q Government's Exhibit forty, and I am going to ask you
14 particularly now with reference to that?

15 A I didn't study Exhibit forty -- Government Exhibit forty.
16 There was another exhibit which you gave to our attorney
17 which was turned over to me to look at.

18 Q Government's Exhibit thirty-nine or thirty-nine (a),
19 is that the Exhibit to which you are referring?

20 A Yes, it is.

21 Q Now, the question that I asked your attorney -- strike
22 that.

23 Does that Exhibit accurately set forth
24 what your corporate records show?

25 A No, I found it inaccurate.

1 Q In what respect?

2 A In that whether they quit or were fired was inaccurate
3 and the year in which they left was inaccurate.

4 Q Mr. Winston, I am talking about what your corporate
5 records show, and would you please be specific.

6 A That is what my corporate records shows.

7 Q Please tell me --

8 A (Interrupting) May I have the charts back, and the ones
9 that you have rejected?

10 MR. CHALENSKI: Your Honor, I object to
11 the witness using those charts, and there has been
12 testimony that they are based --

13 THE WITNESS: (Interrupting) That is
14 the only thing that I have.

15 THE COURT: Sustained.

16 BY MR. CHALENSKI:

17 Q Mr. Winston, there has been testimony that Government's
18 Exhibit thirty-nine (a) was made from the personal
19 folders, and from the payroll records which your company
20 has produced pursuant to subpoena in this case. Can
21 you tell the jury where that Government Exhibit thirty-
22 nine (a) is inaccurate with reference to the Exhibit or --
23 excuse me, -- the records which your corporation has
24 produced?

25 A I found these records inaccurate with the records I

1 prepared from our payroll records.

2 Q Well, I would like to know specifically where?

3 A They are over there (Indicating). Now, that perhaps
4 is the basis, well, the basis on which those records
5 were made in determining the graphs that are rejectable,
6 but they are not rejectable as far as accuracy goes.
7 They are the payroll records and these are accurate.
8 I handled those forms. They are part of the tax return
9 report which I personally prepared.

10 Q Mr. Winston, we have the records which you have produced
11 in this courtroom right here, and would you like to go
12 through these and tell me where the documents which
13 you have in your hand are inaccurate?

14 MR. RICHARDS: This is going to be a
15 rather lengthy examination by the witness because he
16 went through the records and prepared this, and this
17 is a summary of his information. But if you wish --

18 THE COURT: (Interrupting) It is not
19 what I wish. The Government has a right to cross
20 examination.

21 MR. RICHARDS: Yes, sir, I understand,
22 but could it wait --

23 THE WITNESS: (Interrupting) Can I
24 have my records back, for my own reference?

25 BY MR. CHALENSKI:

1 Q Mr. Winston, you have already testified, and that record
2 has been --

3 THE COURT: (Interrupting) There is a
4 pending question. Do you withdraw it?

5 MR. CHALENSKI: No, I do not.

6 THE COURT: Well, let the answer stand
7 and go on to the next question.

8 THE WITNESS: May I have my records back
9 to use for my personal reference?

10 MR. CHALENSKI: Yes (Offering).

11 THE WITNESS: Okay. I will take them
12 one at a time. Well, we will take the first one and
13 it indicates that he terminated in 1971 and I agree with
14 that. You say that he was laid off --

15 MR. CHALENSKI: (Interrupting) The
16 question is not whether you agree or disagree, but what
17 your records show.

18 MR. RICHARDS: Could the witness answer
19 the question now?

20 THE COURT: Yes, please wait for the
21 answer to your question or withdraw it. The option is
22 yours.

23 MR. CHALENSKI: But the witness is
24 again answering a question which I did not ask.

25 THE WITNESS: You asked about the accuracy

1 of this report.

2 BY MR. CHALENSKI:

3 Q What does your record show?

4 A I am doing that. I said that you indicate that Oscar
5 Kuka terminated in 1971, and I agree with that. Your
6 record here indicates that he was laid off, which means
7 discharged, and my records agree with that, no problem.

8 Q Now, Mr. Winston, I might refer you to the source
9 identification on the side. We have got testimony from
10 Mr. Briggs, and Mr. Solberg relating to each of these
11 persons, and we have obtained some information from your
12 company records. In any case, where the company records
13 show the source of the reason for being terminated, that
14 has been identified with an 'R' under source. And in
15 review of your records, Mr. Levan did not find any reason
16 for termination was stated where the respect to Mr. Kuka.

17 A Well, you have here 'layoff'.

18 Q That is correct. There is a 'D' opposite 'layoff' and
19 that was Mr. Briggs testimony?

20 A And that means 'Discharge'.

21 Q That is correct, Mr. Briggs so testified.

22 A I have no disagreement with it.

23 Q Is it your testimony that your records did not show
24 whether or not Mr. Kuka was laid off?

25 A My record does say he was laid off.

1 Q And can you show me where it shows that?

2 A Right here (Indicating). This is 1971, and it shows
3 that he terminated in 1971 and it is checked off under
4 discharge.

5 Q What you are referring to is Defendant Exhibit 'A-g'?

6 A Yes, 'A-g'. So it agrees with your record.

7 Q Is that a company record which you prepared in the normal
8 course of business?

9 A Yes.

10 Q Well, isn't that the summary that you prepared for this
11 trial?

12 A It was a summary of this report which was gotten from
13 our Internal Revenue Service form 941 that shows when
14 a pilot terminated, and which year he terminated. As
15 a matter of fact, it says which quarter he terminated,
16 and we then accounted for it within each year, all of
17 the pilots that parted or terminated employment with our
18 company. So our records agree with you as far as Oscar
19 Kuka.

20 Q Now, Mr. Winston, your Exhibit 'A-g' has been refused
21 in evidence?

22 A Well, they agreed with yours. Are you saying that they
23 are wrong?

24 Q Excuse me?

25 A Are you saying that they are wrong? My records are wrong?

1 They agree with yours?

2 Q They have been refused in evidence. What records have
3 you produced pursuant to a subpoena in this case?

4 A I have asked for payroll records, individual payroll
5 records, I have been asked for them and that is what you
6 got. If this is a summary of those individual payroll
7 records --

8 MR. CHALENSKI: (Interrupting) Your Honor,
9 the witness is referring to a record which is not a
10 corporate record and has been refused in evidence, and
11 he persists in doing so.

12 THE COURT: Do you have any corporate
13 records?

14 THE WITNESS: I do not have any corporate
15 records other than this, and the --

16 THE COURT: (Interrupting) That is not
17 a corporate record. It is not kept in the regular course
18 of business. It was made for this trial.

19 THE WITNESS: It was made for this trial,
20 that is correct.

21 THE COURT: It is not a corporate record,
22 but I will -- pursue with your question.

23 BY MR. CHALENSKI:

24 Q Do you have any corporate records here which show that
25 Mr. Kuka was laid off?

1 A No, I don't.

2 Q Okay. Please proceed to the next name on the list.

3 A Well, the next one says it was 1971 and quit, by Mr.
4 Briggs. But our records indicate that --

5 Q (Interrupting) Please refer to Exhibit 'A-g'?

6 A Yes.

7 Q Do you have other records that have been produced which
8 show anything with regard to Mr. Knipes?

9 A I have a payroll record, an individual payroll card.

10 Q Do any of those records show the reason for Mr. Knipes'
11 termination?

12 A I have not referred to those records for this part of
13 the trial.

14 Q Please refer to the next name.

15 A All right. The next one is Dick Knipe or Richard Knipe
16 and it is 1971 and it shows that he resigned. Your
17 records indicate that he resigned. We have agreed.

18 MR. CHALENSKI: Your Honor, the witness
19 is continually referring to an Exhibit A-g, and I ask
20 that he be --

21 MR. RICHARDS: Your Honor, the witness
22 was asked to determine whether or not that exhibit is
23 correct and he is entitled to respond to that question.

24 THE COURT: That was not what he was
25 asked. Perhaps I better take over. I am sorry. I do

1 not do this because I have any view about the case one
2 way or the other, but it is simply in the interest of
3 shortness of life and we have to proceed with some speed
4 here.

5 Do you have any records to show why anyone
6 of the employees named in this indictment were discharged,
7 contemporaneous business records made at the time that
8 they left the employment of the company?

9 THE WITNESS: I would say no.

10 THE COURT: Do you have any such records
11 to show why any past employees were terminated?

12 THE WITNESS: Just my summary sheet.

13 THE COURT: And what is that? Is it this
14 thing here (Indicating)?

15 THE WITNESS: Yes.

16 THE COURT: Do you have any contemporaneous
17 business records to show that?

18 THE WITNESS: No, we don't keep those.

19 THE COURT: All right, proceed to the
20 next line.

21 THE WITNESS: The next name that you have
22 there is --

23 THE COURT: (Interrupting) Please, I am
24 talking to the prosecutor.

25 MR. CHALENSKI: Yes, Your Honor.

1 BY MR. CHALENSKI:

2 Q Mr. Winston, you are the head of Commuter Airlines, are
3 you not, and the President?

4 A Yes, I am President.

5 Q And what was Mr. Bell's relation to you?

6 A He is the company chief pilot.

7 Q And how often do you confer with him each day?

8 A There is no rule as to how often. Sometimes I don't even
9 see him.

10 Q Well, what is your best estimate of how often you see
11 Mr. Bell and speak to him during the course of the day?

12 A There is no estimate here because every day is different.

13 Q Some days you don't see him at all?

14 A Absolutely.

15 Q And some days you see him for five or six or seven times?

16 A Possibly.

17 Q And do you speak to him usually every day?

18 A No.

19 Q How often -- how many days a month don't you speak to
20 Mr. Bell?

21 A I wouldn't have the slightest idea.

22 Q What is your best recollection of the days that you don't
23 speak to Mr. Bell?

24 A I have no idea.

25 Q Twenty days out of the month?

- 1 A I wouldn't know.
- 2 Q More than ten?
- 3 A I haven't got an idea at all.
- 4 Q More than five?
- 5 A More than five, most likely.
- 6 Q More than ten?
- 7 A I couldn't say.
- 8 Q More than fifteen?
- 9 A He has his responsibilities, and he knows what to do,
10 and it is not necessary for me to see him. I am
11 frequently gone on flights, myself.
- 12 Q How many times a month do you fly, yourself, Mr. Winston?
- 13 A It depends on which year or period you are talking about.
- 14 Q How do the periods differ?
- 15 A I find that I am flying less today than I did perhaps
16 two years ago.
- 17 Q Let's take 1974 in September?
- 18 A 1974? I think our records indicate that I flew
19 approximately four hundred hours a year.
- 20 Q Now, Mr. Bell is your chief flying officer in charge of
21 pilots, is that correct?
- 22 A That is correct.
- 23 Q Does he report to you on a regular basis?
- 24 A No.
- 25 Q Does he report any problems that arise with his pilots

- 1 to you on a regular basis?
- 2 A On a regular basis?
- 3 Q Yes.
- 4 A I would say not.
- 5 Q Does Mr. Warner report to you on a regular basis?
- 6 A No.
- 7 Q Well, when Mr. Bell discovers a problem or has a complaint
8 in regard to a pilot, does he report to you?
- 9 A Not necessarily.
- 10 Q Is he directed to report that to you?
- 11 A No.
- 12 Q When Mr. Bell reports any incidents of misconduct to
13 you, what records do you make?
- 14 A A mental note.
- 15 Q Nothing in writing?
- 16 A Not normally.
- 17 Q Would you direct Mr. Bell to put anything in writing?
- 18 A No.
- 19 Q Has Mr. Bell ever given you anything in writing
20 regarding the termination of an employee?
- 21 A Yes.
- 22 Q And on what occasion?
- 23 A Regarding the termination?
- 24 Q Excuse me, regarding a complaint against an employee?
- 25 A They are so few and infrequent, I can't tell you.

1 Q In regard to Defendant Exhibit Z, which is a memorandum
2 to Jerry Winston from Mark Winston, where has such
3 memorandum been kept since August 1974?

4 A I have a file that I threw it into. I dump anything I
5 don't know where to file into that.

6 Q This relates only to Robert Slough, is that correct?

7 A That is right.

8 Q And was it placed in Robert Slough's personnel file?

9 A It was not.

10 Q Do you have any other memos from Mark Winston concerning
11 employees?

12 A No.

13 Q Do you have any memoranda in that file of yours from
14 Mr. Bell concerning employees?

15 A Employees? In that file? I have cleaned out that file.
16 I went through it for the purpose of this trial.

17 Q And all of those records that you had in it are now
18 before the Court, is that correct?

19 A Yes.

20 Q Either in those boxes at your feet, or in this Defendant's
21 Exhibit Z, is that correct?

22 A No, I have other things that I may have. I don't know
23 whether they are significant or not. They may be a
24 little note, or something like that. It just is -- I
25 would say for practical purposes there is nothing more

- 1 significant than what you have in your hand.
- 2 Q And would you say that anything else that you have is
- 3 insignificant?
- 4 A Yes, I would say that that is pretty insignificant.
- 5 Q When was this memo given to you?
- 6 A In 1974.
- 7 Q And when in 1974?
- 8 A In August.
- 9 Q And when did your son speak to you about Robert Slough?
- 10 A Just before leaving and going back to school.
- 11 Q And when did he leave?
- 12 A In August.
- 13 Q Before September?
- 14 A Yes. August is before September.
- 15 Q And do you have any better way of picking the date?
- 16 A No.
- 17 Q Would it be the end of August?
- 18 A Probably.
- 19 Q In any event, before September?
- 20 A Yes.
- 21 Q And how long after you spoke to your son did he deliver
- 22 this memo to you?
- 23 A I asked him to put it in writing for me, just write me
- 24 a note, which he did.
- 25 Q And how long after he spoke to you did he give you this

1 note?

2 A The same day.

3 Q What were you son's duties at that time?

4 A My son has been working with me since he was twelve
5 years old, and at that time he had -- he is a pilot, and
6 he is familiar with all the scheduling procedures of the
7 company. He is familiar with all of the procedures.

8 Q What was his duty, usually?

9 A I am describing them. Those were his duties and he had
10 counter duties and scheduling duties.

11 Q And where was he stationed?

12 A Pardon me? He was stationed in the Binghamton Operation.

13 Q Was it among his duties to oversee the performance of the
14 pilots?

15 A No.

16 Q Was it among his duties to report to you concerning the
17 performance of other employees?

18 A No.

19 Q But he felt so strong about this Slough that he felt
20 compelled to report to you?

21 A He is my son.

22 Q Now, Mr. Winston -- strike that.

23 MR. CHALENSKI: May we mark this, please.

24 THE CLERK: This is Government's Exhibit
25 forty-six and forty-seven.

(Documents marked Government's Exhibit
forty-six and Government's Exhibit forty-seven.)

BY MR. CHALENSKI:

Q I am handing you Government's Exhibit forty-six and
Government's Exhibit forty-seven for identification,
and are they copies of the financial statements of your
corporations, Broome County Aviation and Commuter Airlines,
Inc., which you have produced (Offering)?

A Yes.

MR. CHALENSKI: The Government offers
Exhibit forty-six and Exhibit forty-seven in evidence.
There is a reference to this litigation in both Exhibits
which we won't object to being cut off.

MR. RICHARDS: I have no objection.

(Government's Exhibit forty-six and
Government's Exhibit forty-seven, received in evidence.)

BY MR. CHALENSKI:

Q Mr. Winston, I show you Defendant's Exhibit X, the
packet of five schedules showing the operations of
Commuter Airlines from -- excuse me, it is September 3,
1974 through and including a schedule dated effective
April 29th, 1975, is that correct?

A That is correct.

Q Now, the change in the November 1, 1974, the schedule
that you testified that you dropped one flight to

1 Washington, D.C., altogether, I understand that there
2 was another flight to Dulles, and that was a stop over
3 on the flight to Washington, is that correct?

4 A We had two Dulles stops, and the Septmber 3rd schedule.

5 Q Now, on November 1st, is it a fair statement that what
6 you did is drop one flight to Washington, to Washington
7 area altogether, and that on another flight you omitted
8 the Dulles stop?

9 A Well, if you consider Dulles as Washington. I don't
10 look at it as Washington. It is Dulles Airport.

11 Q That is within thirty miles?

12 A Well, Washington is, and the other -- well, we call it
13 Dulles, that is all. We dropped both of those things,
14 yes.

15 Q And is it a fair statement to say that you dropped one
16 flight altogether from Binghamton and the Washington
17 area, and that on another flight you dropped the
18 Dulles stop, but there was still a plane going from
19 Binghamton to Washington?

20 A We had five flights which flew into Washington daily.

21 Q You went from six down to five, is that correct?
22 You went from six in September of 1973 down to five in
23 November?

24 A We went five flights into Washington, and we dropped
25 two Dulles landings.

1 Q Now, up until April 1 of 1975, did you stop any flights
2 going to any general areas of the country?

3 A What is that?

4 Q Did you stop any flights going to general areas of the
5 country?

6 A General areas? I don't know what you mean by that.

7 Q New York City, and in general whether Kennedy, or
8 LaGuardia or Newark; going to Washington and whether it
9 was National or Dulles?

10 A On which we had schedules?

11 Q From September 3, 1974 up until April 1 of 1975?

12 A Yes, we dropped a Kennedy schedule.

13 Q And that was when?

14 A We dropped it April 1st.

15 Q And I asked you up until April 1st?

16 A Pardon me?

17 Q My question was up until April 1st?

18 A I am sorry. Going to , according to my reference here,
19 we had no effective change in the New York area up until --
20 up until April 1st. Is that responding to your question?

21 Q Well --

22 A (Interrupting) I'm trying to answer your question. I
23 am trying.

24 Q Nothing substantial in the New York area. The one change
25 that you dropped was one flight or one landing in the

1 Washington area?

2 A Well, we dropped on November 1st, we dropped the two
3 Dulles landings. January 1st, we added one LaGuardia,
4 but we combined White Plains and Newark so that means
5 in White Plains and Newark, instead of having two aircraft
6 fly the schedule, we were able to do it with one aircraft.
7 So the net effect on that January 1st schedule is no
8 change.

9 Q Okay. The September 3, 1974 schedule shows flights
10 from Elmira, and is that when you began your Elmira
11 Operations?

12 A Yes.

13 Q When were your first flights from Elmira?

14 A September 3rd, 1974.

15 Q On that day?

16 A Yes.

17 Q Mr. Winston, Government's Exhibit -- excuse me, Defen-
18 dant's Exhibit W is a chart, and I assume it shows
19 some I.B.M. charter service which you had?

20 A Yes.

21 Q And is that the I.B.M. services which Mr. McKinley and
22 Ferber were providing?

23 A That is true.

24 Q And as you testified on direct, company income was
25 \$11,000.00 in July for that contract?

1 A That is right.

2 Q And that it fell in August to seven, between seven and
3 eight thousand up until October, and then it dropped
4 off in November?

5 A That is true.

6 Q Do you have income on that contract in September --
7 excuse me, January through June of 1974?

8 A Yes.

9 Q And was it at about the rate of \$11,000.00 a month?

10 A Possibly.

11 Q Well, is that a fair statement?

12 A I couldn't say without consulting the record, but it
13 would seem like that it is a fair representation on that
14 chart.

15 Q It works out then to about \$99,000.00 on this contract
16 that you made in 1974. That is a figure of \$11,000.00
17 for each month, January through June, and \$11,000.00 for
18 July, and then \$7,000.00 for two months, and \$8,000.00
19 for another month.

20 Now, when you terminated that I.B.M.
21 contract -- excuse me, you bid on the contract, and
22 your bid was not accepted, is that correct?

23 A That is correct.

24 Q You said something in your direct at the beginning
25 yesterday that you were told by I.B.M. that they

1 didn't -- that they wanted to go pure jet, and that you
2 hand't provided jet service, and ultimately rejected
3 getting that. Was that this contract?

4 A Yes.

5 Q So you didn't reject it. The bid was refused, isn't
6 that correct?

7 A It depends on the way I constructed the financial
8 information necessary to bid on the contract. I was
9 not willing to construct it beyond a two year period,
10 which was necessary to get our figures down lower so that
11 we could be competitive, and based on my construction
12 of my figures, I, in effect, rejected the contract.

13 Q By putting your bid up too high?

14 A Yes.

15 Q Now, you lost the I.B.M. contract, and what pilots were
16 performing services for that contract?

17 A Bill Ferber as a Captain, and Mr. McKinley as a co-pilot.

18 Q Anybody else?

19 A Nobody else. Just those two.

20 Q And you lost Mr. Ferber and Mr. McKinley?

21 A Subsequently.

22 Q But you did lose them -- you lost them at the end of
23 October, 1974, is that correct?

24 A Yes.

25 Q So that it is fair to say that by losing Ferber and

1 McKinely that you had no need to discharge other pilots?

2 A That would not be fair to say.

3 Q That is not fair. You still had to discharge other
4 pilots on account of that termination of business?

5 A We had Michael Baan here who came in the middle of
6 September, and when we knew, before the end of September
7 that we were not going to be successful on that jet
8 contract, Bill Ferber and I, or the crew from the
9 Washington area discussed it with me, and we had agreed
10 that we would make room for them in the Binghamton area;
11 both of them. Bill Ferber had been with the company
12 already six years.

13 Q Is it fair to say that because of that contract --

14 A (Interrupting) Will you let me finish my answer?

15 Q Please finish.

16 A And so, since Baan was new, and Bill Ferber was coming
17 back, that in effect, we did not need Baan, plus other
18 finanacial considerations.

19 Q It is fair to say that the termination of that contract
20 required you to get rid of two pilots?

21 A That is not correct.

22 Q More?

23 A The statement is completely incorrect.

24 Q You had to get rid of more pilots or not?

25 A It, in itself, did not determine how many pilots I had

1 to cut back on.

2 Q You had to cut back because of economic reasons, if
3 I recall your testimony correctly. This is one of the
4 economic reasons that you referred to?

5 A The prime economic reasons, sir, is that we had purchased
6 two large expensive aircraft to be put into service
7 and we had made the decision not to put them into
8 service, and preparing for the coming of these two large
9 aircraft, we had increased our staff but because of our
10 decision not to put these two large aircraft into service,
11 that increase in staff was not longer necessary. That,
12 coupled with other economic conditions, determined that
13 we should reduce our staff. I am not trying to say we
14 are pleading poverty. We had too many crews, and that
15 was the reason for the cutback.

16 Q Now, let me just see if I can understand: You had two
17 Metro planes which didn't serve your purposes at the
18 time, and the economies, so you had to cutback your
19 pilots because of that, right?

20 A We had to cut back the pilots that were staffed because
21 of the addition of those two aircraft.

22 Q You lost the contract with I.B.M. and you had had
23 two pilots who devoted full time to performing that
24 contract, is that correct?

25 A That is correct.

- 1 Q And you say that getting rid of those two pilots was
2 caused in part, because of the Metro aircraft?
- 3 A Getting rid of those two pilots -- I am sorry, I didn't
4 get rid of them. They resigned, and they did not effect
5 the picture as we had established, that we would not
6 increase our staff of captains, but also we would not
7 decrease our staff of captains, other than Michael Baan
8 and as far as our co-pilots were concerned, we were
9 going to cut them back from fourteen to seven.
- 10 Q If you had captains who had equal seniority, with
11 Michael Baan, one or two weeks you testified, would
12 they have been let go in preference to releasing co-
13 pilots who had, well, in the case of Josephson, a year
14 with the company?
- 15 A Are you talking about captains or co-pilots?
- 16 Q Captain?
- 17 A There is no comparison. As far as I am concerned a
18 captain is a highly trained person. A co-pilot I can
19 train in one day.
- 20 Q Did you let Mr. Baan go?
- 21 A Yes.
- 22 Q And he was there a week or two?
- 23 A He was there at the time the decision was made, roughly
24 two weeks.
- 25 Q And if you had captains in equal positions with Mr. Baan,

1 would they have been let go, rather than letting co-
2 pilots go?

3 A No, the co-pilot staff was being cutback because we
4 wanted the strength of the captain staff for a turn
5 in the economy. If we needed to expand, we had trained
6 pilots, and we didn't h-veto go three or four or five
7 months to procure a captain and get him on the line.

8 Q But you felt that you could get along without Captain
9 Michael Baan?

10 A Yes, I felt that we could do without this captain.

11 Q And you testified that you lost some construction charter
12 b business, and you flew as a pilot alone on those most
13 of the time?

14 A No, I didn't fly alone on them most of the time. I flew.

15 Q With passengers?

16 A I flew with passengers, but not most of the time. I
17 was unable -- we had a large staff, or twelve captains
18 and I could not do all of the flying. They were there
19 because we had a need for them, and they were flying,
20 and I took some of the flights.

21 Q And this was with reference to the construction contract?

22 A Whenever I got stir crazy, I went out and took a flight.

23 Q Mr. Winston, you testified that another factor leading
24 to the decision to let pilots go was a public loan
25 contract, is that correct?

1 A Well, there was a general decrease in the overall
2 business, which indicated to me a downward trend in the
3 economy and that we would be effected. It was primarily
4 the inference to me was that this was no time for
5 expansion.

6 Q And did your business, in fact, go down?

7 A For which period?

8 Q Between 1974 and 1975?

9 A Well, for the period concerning 1975 we have two parts.
10 One is up until July and the other after July.
11 Fortunately, in 1975, in September of 1975 --

12 THE COURT: (Interrupting) Can you answer
13 the question?

14 THE WITNESS: I am trying to.

15 THE COURT: Did your business go up or
16 down in 1974?

17 THE WITNESS: In 1974, compared to what?

18 THE COURT: Compared to 1973?

19 THE WITNESS: It went up.

20 BY MR. CHALENSKI:

21 Q In 1975, compared to 1974?

22 A It went down.

23 Q And do you know by how much?

24 A Shall I crank in the factors? Well, the inflation
25 factors and so on.

1 THE COURT: No, crank in the figures.

2 THE WITNESS: I would say it went down
3 possibly \$60,000.00.

4 BY MR. CHALENSKI:

5 Q And you say that you lost about \$99,000.00 because of
6 this I.B.M. contract in 1974, is that correct?

7 A No, I think that the I.B.M. contract was more than that
8 per year; per year.

9 Q And then outside of the I.B.M. contract you made more
10 money on your own, other than in 1975?

11 A In 1975?

12 Q Yes.

13 A I think that if you are going to talk about the year
14 1975, you better crank in --

15 Q (Interrupting) Just answer my question.

16 A Well, I made more money? On what? More money on what?

17 Q Your gross income for the two corporations?

18 THE COURT: What was your business?

19 THE WITNESS: On sales, sir?

20 THE COURT: What was your business?

21 What business were you engaged in?

22 THE WITNESS: We are in general aviation
23 business.

24 THE COURT: That is what we want to know.

25 Whether you made or lost money in that business, and in

1 nothing else.

2 THE WITNESS: Okay, sir. Our profit in

3 19 --

4 BY MR. CHALENSKI:

5 Q (Interrupting) My question was: Did you make more money
6 in your gross income for 1975 from your operation, other
7 than the I.B.M. contract in Washington --

8 MR. RICHARDS: (Interrupting) Excuse me.

9 These two corporations are also engaged as a fixed
10 base operation or operators which generate income for
11 that, and that is the difficulty is addressing himself
12 to in this question.

13 THE COURT: I don't see any difficulty
14 with it at all. His whole business relationship is
15 involved and the employment in the whole business is
16 what is involved in law suit. The question is perfectly
17 clear and the court, for one, would appreciate an
18 answer.

19 THE WITNESS: Our 1975 sales, compared
20 to 1974, went down. It would have gone down even more
21 if we had not gotten a Navy contract --

22 BY MR. CHALENSKI:

23 Q Mr. Winston, you are not answering my question.

24 A All right.

25 Q It went down \$60,000.00 and you lost \$99,000.00 or more,

1 didn't you testify, because of I.B.M. in 1974, is
2 that correct?

3 A I couldn't tell you what the specifics are without
4 analyzing them.

5 Q Mr. Winston, with regard to your purchase of the Metro
6 plane, I recall some discussion on Friday about the
7 rate of interest, four and a half percent going up to
8 thirteen percent, the prime rate?

9 A Yes, I said that the prime rate was four and a half
10 percent when we first negotiated our purchase of our
11 first Metro, but by the time that we got our third and
12 fourth Metro, the prime rate had gone to twelve percent.

13 Q And you paid interest on those planes based on the
14 prime rate?

15 A We paid interest on the last two aircraft at the rate
16 of thirteen percent.

17 Q And how about the first two aircraft, Mr. Winston?

18 A The first two aircraft we paid at the rate of seven and
19 a half percent.

20 Q And the records show it at seven and a half percent?

21 A Yes.

22 Q And that was a fixed term loan over about seven years?

23 A Yes.

24 Q And the last two aircrafts, do you know what your
25 balance was on those two aircraft at the end of 1974?

1 A I don't know what you mean.

2 Q How much did you owe on those two Metros at the end of
3 1974?

4 A I can't tell you.

5 MR. CHALENSKI: May I read you a note,
6 or read to the Jury a note, a note from your financial
7 statements, Government's Exhibit forty-six.

8 'The company together with its affiliate
9 negotiated in 1973 a loan of \$1,200,000.00 from this
10 bank to purchase two new Metro liners turbojet aircraft.
11 Repayment terms call for repayment at seven years with
12 a rate of six to seven and a half percent. In addition,
13 in 1974, the company and the affiliate agreed to purchase
14 two additional Metro liner turbojets. At the year's
15 end the balance due was \$390,000.00 which is anticipated
16 will be paid back substantially in 1975.'

17 Are those figures correct, Mr. Winston?

18 A If that is what the report says, it is.

19 Q Who told you about the name that Dennis Larimore called
20 you?

21 A Ted Bell.

22 Q Now, you and Ted Bell spoke to the pilots on October
23 5th, 1974. Did you and the Defendant Bell have any
24 conversations regarding what was to be discussed at
25 that meeting?

- 1 A No.
- 2 Q Mr. Winston?
- 3 A Yes.
- 4 Q You and Mr. Bell said nothing about that meeting before
5 you went in?
- 6 A I did not discuss the contents of my speech with Mr. Bell.
- 7 Q That is not the question that I asked you.
- 8 A Okay, please say it again.
- 9 Q Did you and Mr. Bell discuss anything about that
10 meeting?
- 11 A Yes. We discussed the fact that a letter arrived
12 indicating that the pilots were considering selecting
13 one of three unions.
- 14 Q And when did you have that discussion?
- 15 A About a day or two later, after the letter had arrived.
- 16 Q And the letter is dated September 24th, and that would
17 be about September 25th or 26th?
- 18 A It sounds reasonable.
- 19 Q Did you see the letter, Mr. Winston?
- 20 A Yes, I did.
- 21 MR. CHALENSKI: Somehow the original
22 of the letter was marked, and the Exhibit has been
23 replaced, and Counsel and I have stipulated that we
24 have a substitute.
- 25 THE COURT: That is all right.

1 MR. CHALENSKI: We will substitute
2 that now.

3 THE CLERK: All right.

4 (Whereupon, the original was substituted
5 for a copy.)

6 BY MR. CHALENSKI:

7 Q Now, I hand you Government's Exhibit twenty-three, and
8 is that the letter which you referred to (Offering)?

9 A I think so.

10 Q Now, when was that, in relation to when you were discussing
11 the firings of these seven co-pilots?

12 A That came about a week later.

13 Q On September 25th or 26th you saw the letter, and
14 that was about a week after?

15 A Try September 20th.

16 Q How about September 28th?

17 A No, the 20th.

18 Q All right. About September 20th you discussed the
19 firing of the employees?

20 A That's right.

21 Q And you discussed the reasons for firing Mr. Slough,
22 correct, with Mr. Bell?

23 A No, I discussed with Mr. Bell that we -- I had decided
24 to cut back our operations, that the economic picture
25 was such that I had decided to cut back our operations

1 to, in effect, around the new aircraft that we had
2 gotten, and not go ahead with an expansion program.
3 As a result of that, I wanted him to give me an
4 evaluation of co-pilots so that we could decide what
5 sort of a cutback we can have.

6 Q When did Mr. Bell give you that evaluation?

7 A He gave me the evaluation, I would say, at the very
8 end of September.

9 Q And that is when you sat down with Mr. Bell and discussed
10 about the pilots and the co-pilots and which ones would
11 be fired?

12 A Yes, for the first stage of our operation.

13 Q So that there were two meetings prior to October 3 of
14 1974 at which you discussed first the need for firing
15 seven co-pilots, and secondly which co-pilots would be
16 the ones to be fired?

17 A That is true.

18 Q And now, with reference to the dates that they were fired,
19 Slough, Josephson and Baan, when did you discuss firing
20 them?

21 A About the beginning of the week. I would say that would
22 be September 30th.

23 Q Now, that is consistent with the notice in the file
24 regarding Mr. Slough having over scheduled the flight
25 in Elmira, is that correct?

1 A The discussion was not necessarily a flight discussion
2 on that. That is, in my relations with him, we would
3 come back and say, 'Okay, this happened and this has
4 happened.' It is just like the notice in the case of
5 Mr. Slough. I didn't know about the missing money until
6 the day he left.

7 Q What time did that discussion with Mr. Bell take place
8 about firing the three individuals; Slough, Josephson
9 and Baan?

10 A I would estimate around the beginning of the week, prior
11 to their dismissal.

12 Q And what time was that?

13 A I wouldn't know.

14 Q Morning or afternoon?

15 A I haven't got the slightest idea.

16 Q Evening?

17 A I generally go to bed at midnight and I know it wasn't
18 midnight.

19 Q Sometime between eight o'clock in the morning and
20 midnight?

21 A I don't know.

22 Q You obtained Gerald Excell's ballot at some point, did
23 you not?

24 A Yes.

25 Q And you obtained a second ballot from Mr. Excell?

1 A Subsequent to the election.

2 Q The next one?

3 A Yes.

4 Q And who gave you Mr. Excell's ballot?

5 A I would say that Excell gave it to me.

6 Q Were you in the courtroom when Mr. Bell testified that
7 he received it from Mr. Excell?

8 A Then possibly that was the way it got to me.

9 Q Mr. Bell may have given it to you?

10 A Which one, the first or the second?

11 Q The second ballot?

12 A Oh, the second ballot? He received it for me, and
13 I said that in my testimony.

14 Q When did you and the Defendant Bell first discuss that
15 the union was the Teamsters?

16 A My records indicate that I learned of the Teamsters on
17 October 7th.

18 Q That was following the meeting of October 5th?

19 A That is right. That is right, and that is why I mentioned
20 nothing of it in my meeting of October 5th.

21 Q Mr. Bell, did he tell you that you urged the pilots
22 to attend that meeting at which union representatives
23 were to speak on October 2nd, 1974?

24 A Mr. Bell did not know about that meeting.

25 Q And Mr. Bell, did he know that any meeting was to be

1 held at which union representatives were to speak?

2 A I couldn't say whether he knew. This information
3 generally did not filter down to us, at least not to
4 my knowledge. Our general policy was if somebody wanted
5 to attend a union meeting, more power to go. Go ahead
6 and attend it. That was our recommendation to everybody;
7 anybody that asked.

8 Q Did you and the Defendant Bell discuss what either of
9 you were going to say at that meeting of October 5th,
10 1974?

11 A No, we did not.

12 Q Did you discuss what the general purpose of your
13 speeches were supposed to be?

14 A The purpose?

15 Q Yes.

16 A Yes, it was supposed to be about unions, and giving our
17 position relative to the selection of a union or not.

18 Q When did this discussion take place?

19 A Prior to October 5th.

20 Q And how many days prior?

21 A Oh, perhaps a week.

22 Q And that would be prior to the second, in any event?

23 A Yes.

24 Q And that would be about the time that you were discussing
25 firing Slough, Josephson, and Baan, is that correct?

1 A Yes.

2 Q Now, you also mentioned certain economic factors that
3 you talked over with Mr. Bell for getting rid of the
4 union, as I recall it?

5 A I didn't hear that.

6 Q As I recall it, you mentioned that?

7 A Prior to that?

8 Q You talked over certain economic factors with Mr. Bell?

9 A Yes.

10 Q And the reasons for getting rid of employees, and you
11 talked over the state of the economy, correct?

12 A Now, with him I discussed that we were cutting back,
13 and I was not going to use the new aircraft that we had --
14 that had just been delivered to us. We were going to
15 ground them and put them in the back of the hangar, if
16 that is the way that you wanted to describe it, and that
17 all of the pilots who had been hired, I wanted to cut
18 back, and that they had been hired for these -- for this
19 new delivery of aircraft and we were going to cut back.
20 We didn't need them. If we didn't have the aircraft
21 we don't need them. We had prepared for the arrival
22 of these aircraft long before they arrived.

23 Q Now, another reason that you mentioned was the termination
24 of the I.B.M. contract?

25 A Not necessarily to him, but that was a factor in

1 considering the cutback, from my consideration, concerning
2 the cutback.

3 Q And the contract with public loan, that was another
4 factor that you considered?

5 A Yes, I considered that as the state of the economy.

6 Q And at that time you were not aware that your employees
7 were investigating unions, is that correct?

8 A The decision was made on September 20th, and I can tell
9 you why, but it was made on September 20th. It was
10 long before this letter arrived indicating that there
11 were some pilots interested in three or more unions.

12 Q On September 20th, you were unaware that your pilots
13 were interested in organizing a union, is that correct?

14 A I don't think that the pilots were aware that they were
15 interested.

16 Q Mr. Winston, please answer my question.

17 A I was unaware.

18 THE COURT: Mr. Winston, there was some
19 reference in your speech, as I recall it, to prior
20 attempts by your employees to organize the union?

21 THE WITNESS: This was in 1970, sir.

22 THE COURT: And what was the outcome of
23 that?

24 THE WITNESS: The pilots voted against
25 the union.

1 THE COURT: And did you favor or disfavor
2 their organizing that union?

3 THE WITNESS: I disfavored it. I read
4 the same speech that I read here today to them, four
5 years ago.

6 BY MR. CHALENSKI:

7 Q Did you discuss economic factors with Mr. Bell at any
8 time subsequent to September 20th, 1974?

9 A Economic factors?

10 Q Yes.

11 A I don't normally discuss economics with Mr. Bell.

12 Q But you did on this one occasion?

13 A I simply told him that I am not going to put the aircraft
14 into operation. That is an operational decision, and
15 not an economic decision.

16 Q At any later time did you discuss economics with Mr. Bell?

17 A No.

18 Q The answer is no?

19 A The answer is no, from a meaningful discussion.

20 Q Did you review these reasons with him at any later time?

21 A At a later time?

22 Q Yes.

23 A The reasons for which?

24 Q The economic reasons for laying off your seven co-pilots?

25 A I discussed the operational reasons, which means that

1 if we were grounding the aircraft, which the records
2 will show that we did ground, and we had hired a group
3 of pilots to increase our staff, and in anticipation
4 of the arrival of these aircraft, then, the cutback was
5 an operational decision. We are not going to have them
6 stand around and twiddle their thumbs.

7 Q With the I.B.M. you had some contracts with I.B.M. and
8 you mentioned the five hundred hour minimum?

9 A Yes.

10 Q That is or is that supposed to mean -- strike that. By
11 that do you mean that I.B.M. flew only five hundred hours
12 with you?

13 A No, what we mean by that is --

14 Q (Interrupting) That is just a guaranteed minimum?

15 A It is a guaranteed minimum by I.B.M.

16 Q So that all of your plans to reduce co-pilots were solely
17 for business reasons, and had nothing at all to do with
18 the union coming in?

19 A Absolutely.

20 Q And you didn't even know, when they were made, you didn't
21 even know that the pilots were interested in forming
22 a union?

23 A That is correct.

24 Q Now, your plans were already fixed by -- well, as of
25 September 20th, correct?

1 A That is correct.

2 Q And no changing them after that date?

3 A Well, I wouldn't say that. The way it progressed, there
4 were no changes, but there was also the possibility of
5 a change.

6 Q Now, on September -- excuse me, October 5th, 1974,
7 was there any change in those plans to lay off co-pilots?

8 A Any change?

9 Q Yes.

10 A It depended on whether my being an optimist would
11 prevail or not, that is the actual circumstances. I
12 was optimistic, hoping for a turn for the best. It
13 did not come about.

14 THE COURT: We will adjourn now until
15 tomorrow morning at ten o'clock. Don't talk about the
16 case and don't let anybody talk about it with you.

17 (Whereupon, the Jury was excused.)

18 (Whereupon, the following took place
19 without the presence of the Jury.)

20 THE COURT: How are we doing? How are
21 we doing schedule wise?

22 MR. CHALENSKI: I will be the rest of
23 the morning with Mr. Winston, Your Honor.

24 THE COURT: The whole morning? All right.

25 THE CLERK: Court stands in recess.

(Whereupon, the proceedings were
recessed at 3:35 p.m. until the following morning.)

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - -x

UNITED STATES OF AMERICA,

:

Plaintiff-Appellee,

:

Docket No.
76-1436

v.

:

JERRY WINSTON, BROOME COUNTY
AVIATION, INC., COMMUTER AIRLINES
INC., and THEODORE (TED) BELL,

:

CERTIFICATE
OF SERVICE

:

Defendants-Appellants.

:

- - - - -x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

MARVIN WEXLER, being sworn, states:

I am an attorney associated with PAUL, WEISS,
RIFKIND, WHARTON & GARRISON, attorneys for appellants herein.
On March 24, 1977 a clerk employed by my firm personally
served two copies of the attached Brief of the Defendants-
Appellants, containing revised record references in accordance
with Rules 30(c) and 31(b) of the Federal Rules of Appellate
Procedure and in accordance with a Stipulation concerning the
submission of a deferred Appendix, and also served two copies
of the deferred Appendix (one copy of the exhibit volume) on
Paul V. French, Esq., United States Attorney for the Northern

District of New York, Office of the United States Attorney
for the Northern District of New York, United States Court
House and Federal Building, 100 South Clinton Street, Syracuse,
New York 13202.

Marvin Wexler

MARVIN WEXLER

Sworn to before me this
24th day of March, 1977.

Antoinette Scaffidi

ANTOINETTE SCAFFIDI
Notary Public, State of New York
No. 41-8772300 Queens County
Certificate filed in New York County
Commission Expires March 30, 1978

